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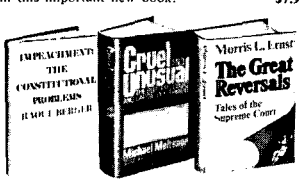

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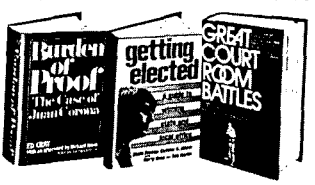

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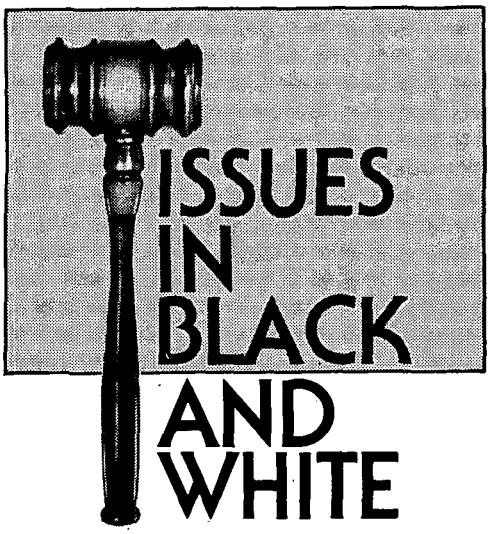

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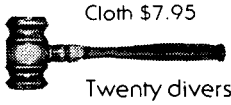

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Published monthly except combined July-August issue by The Washington Monthly Company, 1028 Connecticut Ave., N.W., Washington, D.C. 20036.

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Subscription rates: U.S. and possessions–$12.95, one year; $22, two years; $30, three years. Foreign, including Canada, $1.50 per year additional, surface; air mail rates available on request. Back issues $1.50. Send all remittances and correspondence concerning subscriptions, undelivered copies, and changes of address to 1028 Connecticut Avenue, N.W., Washington, D.C., 20036.

Unsolicited manuscripts must be accompanied by a stamped, self-addressed envelope.

Printed by The William Byrd Press, Inc., Richmond, Va.

Second class postage paid at Washington, D.C. and additional offices.

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VOLUME FIVE NUMBER ELEVEN
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Letters

Moral Myopia: "The New York Review" and the New York Intellectuals

I am not prone to writing editors and my other habits are good also; however, I have to make an exception in order to praise your extraordinarily fine review of Richard Kostelanetz' mediocre book ["Moral Myopia: *The New York Review* and the New York Intellectuals," by Suzannah Lessard, November].

CHARLES U. DALY
Cambridge, Mass.

Charles Daly is vice president for Government and, Community Affairs of Harvard University.

Can't tell you how much I enjoyed your balanced knock of *The New York Review of Books*. Particularly such gems as describing Chomsky as a "tedious Johnny-one-note," 'gad how true. Particularly, too, your assessment as basically and mis-fortunately a thing written from private libraries and usually at a second or third remove from experience. From the start I've found the thing unreadable—gray, over-long, academic, etc. etc.

AL HILGER
New Haven, Conn.

. . . I suspect you are in trouble from the start because you are working off Kostelanetz' impressions and. . . [his] conspiracy theory has more conspiracy than theory . . . . My own impression is that Kostelanetz wants to be Jason or Podhoretz. He takes on their cliquishness without coming to terms with the fact that to the degree that there are cliques in the literary world they are relatively unimportant.

He complains and has in the past quite often about how hard it is for young writers and writers in general to get published in book form. He is quite wrong. It is too easy to be published in hardback. The business would be better if all publishers trimmed their lists 30 per cent. Unlike the magazine business where the odds are very much against a piece being accepted, there is almost no critical rejection process in books. If it comes in, is well typed, and has 301 pages, it gets printed. Almost no editors send books back for serious rewrites; most editors publish a majority of books that they do not believe in (and indeed are often contemptuous of). Because it is easier to put some-

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thing on the conveyor belt than to deal honestly with an author. The number of real books which are published each year is about 25 percent of the total of books. All publishers do this and thus cheat both the bad books, and in fact the good books which have to support the non-books. An example would be Tim Crouse [*The Boys on the Bus*]. A fine book. Allocated far too little resources by Random House (because it is not a big book). In a wiser profession they would know they have a diamond and would triple the normal budget. But they go by rules. So I go over there every day and fight for more advertising space for him. Because having gone through the same bit in my early years and having had earlier books get screwed, I know what is happening to him. Which he does not.

Faddism. Though it should take two to three years to do a real book, sometimes four or five, the business is appallingly faddish. Almost no editors sit back and think how they can allocate their resources so that in four years they might be coming up with a real list of real books. Instead they respond to fashion—and headlines and produce shit. Five years ago blacks. Four years ago War. Three years ago Indians. Two years ago Women and Chicanos and Ecology. This year fuel and Watergate. All instant books. All crap. One editor in ten is a real editor. You can count them on the fingers on two hands.

The real danger in the book business is the growing power of the paperback world on the hard cover. Which is far more important than Epstein or Podhoretz. Paper is now in the process of taking over hardcover and dominating our taste, which is not necessarily a good thing. Increasingly books will be signed first through paper and then on to hard; or when they come in and before printed they will go to paper. If paper buys, then hard gets behind them. Which is very tricky—it means that certain books which are important but high risk commercially will become ever more orphaned, ever less supported by an already non-supportive book business. And fewer and fewer books bought by paper in the $15,000 paper range; and instead the paper people competing with bigger sums for fewer books. (I'm a distinct beneficiary of this but I do not think it is a particularly healthy trend). Thus the real power in the literary world goes ever more not to Podhoretz or Epstein, who have little muscle in terms of dollars, but to a handful of people who do the choosing at the paperback houses. Thus Barbara Epstein at *NYRB* is not as important as Jason who is at Random House who is not as important as Jim Silberman who heads Random House, who is not as important as *his* wife Leona Nevler who is a key taste maker and heiress apparent at Fawcett. Power is dollars. . . .

DAVID HALBERSTAM
New York, N.Y.

David Halberstam is the author of The Best and the Brightest.

I write to express my outrage at what you have put into print about me in your November issue, on page 16.

You report Kostelanetz's charge, without making any specific qualifications about my alleged role, that "an exclusive Mafia-like club exercises monopolistic control over the country's channels of communication. At its core the club is much like self-promoting literary cliques. . . ." There is "a powerful center" consisting of five people: Decter, Podhoretz, Epstein, Silvers, and myself. "These people," you continue, "may have temporary spats with each other but they are fundamentally in collusion, as are competing Mafia capos."

These remarks, and especially the comparison with the Mafia, are insulting, without basis in fact, and libelous. The Mafia is a criminal organization; to be compared with the Mafia is to have it suggested that one is a criminal or engaged in criminal-like activities. For either this implication, or any charge of "collusion" with the others named, or indeed, *for anything else*, you offer no evidence whatsoever. My name is brought in; there follow a series of descriptions of alleged events; no connection is made between me and them; yet the unsuspecting reader, for whom you elsewhere show such solicitude, can only infer that since I am at "the powerful center," I must somehow be connected with what follows.

What Kostelanetz may or may not say in his book interests me not at all, in this context. Your article must stand on its own. *To repeat slanderous material is to indulge in slander*.

Mentioned at a cocktail party, the idea that these five people, or any possible combination of them, are "an exclusive Mafia-like club" exercising "monopolistic control over the country's channels of communication" (which? TV? radio? the press? or just *Dissent*?) would only provoke hilarity, so preposterous is it and so utterly paranoid and ignorant. Put into print, it

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becomes a significant piece of nastiness.

You are guilty of that nastiness.

In an earlier version of this letter, I had written in much detail about the relationships—more accurately, the *non*-relationships—among the five people you cite. But it occurs to me that, since you showed no interest whatever in investigating the truth or falsity of what Kostelanetz says, since you did not trouble to ask any of The Five whether there was any truth to these charges, it would be absurd for me to offer *now* the relevant details. Suffice it to say that with one of The Five I have not spoken in six years, with another not spoken in four years, and with the other two in almost a year; that the relationships among the other four are hardly more cordial, probably less so; that there are deep, passionately-held intellectual-political differences splitting these five people into at least three and perhaps more groups; that I have had no connections whatever—I repeat, no connections whatever—with the one specific matter you cite (Random House-*New York Review*); that what you call "temporary spats" are actually long-standing (in some instance, at least 7-8 years) breaks over politics; that there is no evidence of being "fundamentally in collusion. . . [like] Mafia capos;" and that, indeed, if you brought these five people together in one room, something that probably hasn't occurred for at least a decade, the only possible result would be bitter disputation.

Now I ask you: what evidence is there for saying that "the powerful center" functions like an "exclusive Mafia-like club?" When did this "club" meet? Where? How is the "collusion" managed? The Mafia, one gathers, does have periodic gatherings to iron out relations, divide the spoils etc. What equivalent can be cited for the five people mentioned? What interest do I have in promoting Epstein's (as I regard them) radical-chic books at Random House? What interest does he have in helping my (as he regards them) pallid social democratic books?. . .

You have done me a grave injustice. I have received many bad reviews in my life, a number of them in *Commentary* and *The New York Review* (apparently the "fundamental collusion" wasn't working so well then. . .) I haven't been overjoyed by them, but like every other writer, I have had to take them. I grant people the right to say I am stupid, illiterate, reactionary, ill-informed, a dangerous radical, or whatever. But I don't propose to let anyone compare me to the Mafia, with all that implies of criminality; I don't propose to let anyone cast doubt on my integrity. And that is what you have done.

You and your magazine owe me a public statement, in your columns, saying in effect that you have printed or repeated a slander for which there is no evidence.

IRVING HOWE
New York, N.Y.

Irving Howe is the editor of Dissent.

I would have thought that a writer so concerned with corruption as you say you are would have taken the trouble to read *The New York Review* before trying to write about it. Do you really think that W. H. Auden, I. F. Stone, Stephen Spender, V. S. Pritchett, Christopher Lasch and so on (who are all Random House authors and writers for the *Review*) are involved in a literary fraud manipulated by me, or that their pieces in the *Review* would suggest as much to a responsible reader? Since you strongly imply that they would, shouldn't you have read their articles, instead of simply counting them, and told your readers just how this fraud reveals itself? Do you understand how deeply your article insults these writers? And how can you possibly say that the *Review* was not critical of the New Left or that Stone doesn't cover the White House or the Pentagon? And how can you write about the Literary Situation when you make no effort to understand the writers concerned? Is it really only a matter of counting up who reviews whose books? Shouldn't you have read some of their books before presuming to judge their authors?

I cannot imagine a way not to take your imputations of bad faith personally.

JASON EPSTEIN
New York, N.Y.

Jason Epstein is a vice president of Random House and a founder of The New York Review of Books.

Just read your article about literary politics. It makes many good points. I disagree with you somewhat on the ethics of people reviewing books written by friends. If the review is an honest one, I don't see in the least what is unethical about it. Perhaps what is at issue here is the question of "objectivity." I've always felt very strongly that the pose of objectivity, and the claim to

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objectivity, of most people in our intellectual and academic worlds was at best a self deception and at worst an outright fraud. If I review a book I like, I say that I like it and I say why—I don't pretend that this is some judgement coming down from Olympus.

As it happens, I am often asked by friends either to review a book they have written, or in some cases to read manuscripts and, if I like them, to push them with publishers. This seems to be an important part of my work; my own first book found a publisher in part because of the efforts of someone who liked it and believed in it—and who was a friend of a friend of a friend of mine. My personal policy is never to review books about which I am not enthusiastic; it seems a waste of my time. But I have very often said to friends, or other people who have sent me manuscripts or books, that I don't think the book is good enough to publish or, if published, for me to review favorably or support. Sometimes this makes people very angry.

As it happens, I have endorsed, either in reviews or in statements, so many books that I really do believe in that it has created something of a problem for me—or at least it may have. It makes it harder for editors to find people to review my own books, and it means that most of the people who might otherwise be expected to write a review which was both understanding and sympathetic are ruled out. This leaves strangers if not enemies. Thus, when the Sunday *Times* got around after many years to doing a retrospective review of my first three books, they turned the job over to a notorious educational right winger, and a man who's famous for a savage tongue—and he did the expected. My next book they turned over to a middle echelon New York public school bureaucrat, with predictable results. Your dictum, if rigorously applied, might lead to the result that my books, if reviewed at all, would only be reviewed by enemies—people who might claim to be "objective" but who would have very important personal and professional reasons for opposing the point of view I put forward. . . .

The problem of how much do we help our friends is not a simple one, in literary politics or any other kind. At some point, helping one's friends turns into cronyism, nepotism, and corruption. But carry the opposite principle to an extreme and what do you get—that people should only help their enemies? I would think this would be a very difficult problem in politics, where somebody who never helped his friends would obviously never have any.

JOHN HOLT
Boston, Mass.

John Holt is the author of several books on education.

The editors reply:

John Holt is right. Conflict-of-interest is a very difficult problem in politics. And one begins to really understand it when one begins to understand the appearances of conflict that occur in one's own life and the real temptations, conscious or unconscious, that they often represent. This is why we published "Moral Myopia: *The New York Review* and the New York Intellectuals." Too often our friends in New York will leap to a conclusion of guilt in the case of the congressman who accepts a campaign contribution from a paving contractor while voting for a highway bill, but will not see even an appearance of impropriety in favorably reviewing another of their own publishers' books.

We believe that the errors of government will not be properly understood as long as the critics of government fail to see the roots of those errors in themselves. Where those roots are not perceived, the tendency is for the moral critic to lecture the immoral official. "Thus," Suzannah Lessard states in her article, "we have a lot of Chomsky-like moralizing from library armchairs and practically no trips to the Pentagon or the White House to inquire how real human beings come to create horrors like Vietnam." I. F. Stone is a genius at mining important stories almost exclusively from documents. But he is unique, and even he misses the human dimension in the story of why things go wrong.

As for Jason Epstein, a valued friend, and Irving Howe, we respect them both and intended no imputation of bad faith or criminality to either of them. We agree with Epstein that we were wrong in saying the *Review* had failed to criticize the New Left. Otherwise we are astounded at the inferences Epstein and Howe have drawn from the article and depressed at the humorlessness with which they have missed its point. An example is Epstein's argument that "great" writers should not have to answer for apparent conflict-of-interest. We believe that they have the same obligation as the congressman who takes the campaign contribution from the paving contractor and whose duty to disclose should in no way be diminished by the fact that he is a "great" congressman.

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Heading the Highway Lobby Off

David Martin's "Heading the Highway Lobby Off" [November] was both timely and informative. As a staff member who went through several months of tedious negotiations on the highway bill, I found it to be generally fair and accurate reporting of the events surrounding the emergence of that legislation.

There is, however, one error. He refers to the secret conferences between the House and Senate members which eventually produced a breakthrough and indicates that the two Senators involved in the conferences were Senators Muskie and Baker. That is incorrect. Senator Muskie never attended any secret conference with Congressmen Harsha and Wright. The conferences were called by Senator Bentsen of Texas, who believed they constituted the only means of breaking the deadlock. The two Senators attending were Senators Bentsen and Baker.

RONALD L. KATZ
Washington, D.C.

Ronald Katz is on the staff of Senator Lloyd Bentsen.

ITT and Watergate

My interpretation of the reason for the Watergate burglary is quite different (and more prosaic) than Timothy Ingram's ["ITT and Watergate: The Colson Connection," November]. I feel that it was committed primarily to find secret Democratic contributors.

Don't forget, that spring the Democrats were playing up their own financial openness as contrasted with the Republicans' pre-April 7th secret money. What member of the Nixon reelection campaign staff would believe that the Democrats could survive without secret contributors? Couple this with the belief that burglaries could be committed with impunity, and you have a task force searching for secret financial transactions in the Democrats' files and bugging Lawrence O'Brien's phone to hear him talking to secret contributors.

Ingram's case for suspecting that the ITT documents were at issue is weak. Even if it were suspected that the documents were in O'Brien's hands, why bug his phone? Why send in a group charged with photographing financial documents if the non-financial ITT documents were the object of the search? If O'Brien did have them, I doubt if he would have commingled them with his financial

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New York Univeristy recently presented the Second Annual Don Hollenbeck Award to **The Washington Monthly** in recognition of its articles on journalism during the year 1973:

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We Knew What We Were Doing When We Went Into Vietnam
by Henry Fairlie

The two articles have been reprinted together and may be obtained by sending $1.00 to:

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files. And as for cost, $250,000 is only one-eightieth of $20 million. Compare this with the effect of deflating a campaign based on candor and financial openness by rattling a few financial skeletons two weeks before the election.

MICHAEL D. MALTZ
Evanston, Ill.

Health: The Care We Need and Want

In commenting on Blumenthal and Fallows' extensive indictment of American medicine ["Health: The Care We Need and Want," October] it is difficult to know where to begin unless, like me, your views have been misinterpreted. Quoting my analogy between Health Maintenance Organizations and franchised food operations, the authors employ the press agent's beloved ". . . ." to obscure the force of the actual quotation. What I also wrote, and what the authors' ". . . ." left out, was: "I appreciate these franchise places for delivering adequate food at low cost. There are times when that's all I want—especially when my children are along."

I specifically mentioned defects in fee-for-service care, and was not suggesting that the existing system "offers service like that of the Ritz or Four Seasons," but instead pointing out that greatness is seldom achieved by a committee. By bloating and impersonalizing primary care we will, I suspect, eliminate both the highs and the lows and obtain a consistent mediocrity. I am surprised that Blumenthal and Fallows twisted my analogy, since they seem to share my own suspicion of mass medicine and HMO's.

Personal pique aside, I regret that the authors spread themselves over so many relatively disconnected areas of medical care as death and dying, health financing, specialty certification, and medical education. The authors may protest that these areas are related—of course they are, but they are also related to many areas never mentioned in the article. Our care of the dying relates as much to the loss of religious influence in our lives as it does to what medical students are taught.

The scatter-shot nature of the article produces strange internal paradoxes. Do the authors want our specialists to be more highly trained or less? If ignoring the relationship between various specialties is "perilous" (p. 8, col. 2) and if specialists should have "a general scientific background and an understanding of the connections between the specialty and other branches of medicine" (p. 9, col. 1), then how exactly and where exactly do we lop off the unneeded "phases of the normal M. D. training" (p. 9, col. 2)? The authors quote authorities who suggest that students "dispense with considerable course work and training which they never intend to put into practice." This would be lovely had the authors not previously reminded us of the interconnections between various medical disciplines, many of which we cannot even be anticipated when the actual material is taught. And, of course, how ideal it would be not only in medicine, but in the law, business, and life in general, if what one never *intended* to put into practice coincided with what one never *had* to put into practice.

I am no enthusiast for much of medical education, but Blumenthal and Fallows are seriously negligent in their knowledge of medical training. Rather than being in a "lock step through four years of general medical education," medical students for the past ten years have been exposed to an amazing number of electives, alternatives, "track systems," shortened curricula, new courses, and multi-media teaching. I doubt if any educational experience is so closely studied, tabulated, and correlated as in American medical schools. The authors should have taken a closer look at the monthly *Journal of Medical Education* before offering their naive ideas about shortening medical training. They would have found that for years their suggestions have been debated, acted upon, discarded, or continued not only in several dozen medical schools, but in almost every one. Much of

Answers to December puzzle:

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the curriculum change is, in my opinion, worthless, but the continual re-evaluation is absolutely necessary. To imply that the situation is static is incorrect.

Nor is it true to claim that medical schools "fill the classes with would-be Nobel laureates" and therefore don't produce general practitioners... [B]ut... a change away from research orientation of students and schools occurred in the mid 1960s. It did, and it is a disservice to medical schools to claim otherwise.

The authors insist that we keep deductibles and coinsurance out of any health plan, but then go on to say—correctly—that the demand for medical care by some people seems limitless and "that extra dollars spent on it must be considered luxury expenditures." Since both the English system and Kaiser-Permanente suffer from over-utilization by a segment of their populations and since both have met the problem in makeshift ways (the English by having people wait in GP's offices, Kaiser by using machines to screen out what its director calls "the worried well"), it is not at all so clear that deductibles and coinsurance are evil. If one trusts the people, there is no reason why they cannot be responsible for allocating their medical dollars, and there is little need for me to subsidize my neighbor's hypochondria or "luxury expenditures." There is, on the other hand, good moral and fiscal reason for me to make sure that he is not bankrupted by illness—reason to make subsidized catastrophic illness insurance or Professor Martin Feldstein's Major Risk Insurance intelligent possibilities for national action. Neither is mentioned in the article.

There's a lot more, too, but I hope my point has been made. Much of the article is, as a friend of mine remarked about another Fallows' piece, "provocative and original," but too much is superficial. The focused research of David Ignatius' article on the chummy relationship between deans and drug manufacturers is a happy contrast.

MICHAEL J. HALBERSTAM, M.D.
Washington, D. C.

The editors reply:

To start from the bottom, Dr. Halberstam agrees with us that there are two ways to ration medical services—price being one way and "queuing up" the other. We expressed our preference for the queuing system, since that way everyone at least has an equal right to hypochondria instead of a right dependent on income. We also cited studies showing that "coinsurance" and "deductibles" can deter people from getting the care they need.

About Nobel laureates—it's true that things have improved since the 1960s, especially in the rise of "family care" as a specialty. Our argument was that medical schools choose their students on the same purely academic criteria one would use to choose research chemists, which may not be the best way to choose humane physicians. Considering recent polls showing that half the undergraduates at schools like Harvard plan to apply to medical school, the situation may get worse.

When we come to specialty training, it is our turn to feel misinterpreted. One of our points was that medical training takes too long and that American doctors are, in general, far too specialized. This is hardly a radical suggestion, and many medical school deans have, as we noted, proposed ways to lop off unneeded courses. Our second point was that—whether the doctors are GPs or specialists—the way we train and certify them has little to do with their competence or their ability to provide the care their patients expect. The profession recognizes a stunning range of specialties, which it seems to view as progressively higher stages on the evolutionary tree. The student must be exposed to the rudiments of a lot of specialties—in a way that does not really equip him to practice—before moving up to more intense training in his own field. In some cases this long process is necessary; an internist needs broader exposure than an orthopedist. But in other cases it is not, and the medical licensing system is usually too inflexible to adapt to this difference. Instead of measuring competence in a specific field, it measures diplomas. Anyone with an M.D. is entitled to treat a whole range of illnesses and to use procedures that neither aptitude nor training may suit him for. Diplomaism is not unique to medicine, but its consequences are more expensive there than elsewhere.

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The Memo
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Chapter Two of Moral Myopia: The Watergate Committee and its Staff

by James Fallows

During the televised Watergate hearings senators kept reminding witnesses that they were all part of a "great civics lesson," that the revelations and expiations were necessary steps in a painful process of education that could prevent the country from making the same mistakes again.

After six months of presenting their celebrated hearings, members of the Watergate committee themselves demonstrated how hard it can be to absorb the lessons of their inquiry.

On November 19, the committee's chief counsel, Sam Dash, suspended one of his staff members for being the source of a magazine article containing unflattering comments about his colleagues. No one accused the investigator, Scott Armstrong, of incompetence or poor performance. Indeed, Senator Lowell Weicker has called him "the best investigator on the staff," and, even in announcing the punishment, Dash called Armstrong "a very fine staff member who will be welcomed back [at the end of his one-month suspension without pay] because we need him." Nor was there a suggestion that Armstrong had leaked any substantive information about the committee's work. The article that undid him, "Senators, Sandbaggers, and Soap Opera," by Timothy Crouse in the November 22 issue of *Rolling Stone*, contained nothing new on where the committee was looking or what might crawl out from under the next rock to be upturned. Instead, the Crouse article quoted anonymous sources to portray the committee as an organization run with all the selflessness of the Medici Court and the competence of the Lavender Hill Mob. This, for example, was his description of how the committee's three assistant chief counsels—Terry Lenzner, James Hamilton, and David Dorsen—got along with their boss:

"Everyone hates Lenzner and his crew because they think they're better than anyone else and let them know it," says a Majority staffer. "Terry's a prima donna,

James Fallows is an editor of The Washington Monthly.

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and he's caused a lot of clashes. He ran into trouble with Buchanan [presidential adviser Patrick Buchanan, who appeared to best Lenzner at one session], but he's still the best cross-examiner on the committee, and it's a shame that Sam Dash hasn't let him ask more questions in the hearings. Sam's an egomaniac and he won't let anyone else handle a major witness. He doesn't mind Jim Hamilton so much, because Hamilton's so lame. I mean, Mardian [Assistant Attorney General Robert Mardian] got on the stand and just ate Hamilton up. And Dave Dorsen's a passive type, so he doesn't worry Sam. But Lenzner's a fireball. He threatens Sam. And there was so much flak after the Moore session [in which White House counsel Richard Moore, silver-haired and feigning the onset of senility, made Lenzner look like a character out of *Clockwork Orange*] that the Senators didn't want to put Lenzner back on, either.

There was more in this vein, especially about chief minority counsel Fred Thompson and Senators Baker and Gurney. Not all of it came from Armstrong, but a lot did and that was what earned him his punishment. The process leading up to the suspension took more than a week and revealed some unpleasant truths about the way power can affect those who exercise it. Knowing what we do about the Nixon inner court, none of this would seem surprising if it involved the leak-haters of the White House—or, indeed, if Sam Dash and his crew were as tediously self-righteous as they often appear over the airwaves. In fact, Dash, *et al.*, are decent, likeable men, but they were sharpening the knives of retribution in a fashion which was only a faint shadow of the Nixon plumbers but which was a shadow nonetheless. It's tempting to make "sense" of such a situation by assuming that the behavior was actually better than it seems, or that the people are worse. But fudging the evidence sacrifices the importance of the case, the meaning that grows from its very inconsistency and that applies not just to politics but to culture and commerce as well. It is that bad men aren't the only ones who do bad things, and that the forces which make the bad men worse can also

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affect those with high purpose and a distinguished record.

It's Fratricide Time!

"It was on a Friday afternoon—that would be November 9—when it first started being handed around," says one person involved in the affair. "People were saying, 'Hey, have you seen *Rolling Stone*?' and then, 'Hey, where did this come from?' "

For all the upset the piece caused, it might well have appeared in the Congressional *Record* rather than in a rock magazine whose other big articles in the same issue were on the Grateful Dead and a truck driver's blues. In some of the hipper parts of the country, *Rolling Stone*'s political coverage has attracted considerable attention. Hunter S. Thompson's hallucinations about the body politic first appeared there, as did Crouse's fine pieces on the presidential press corps. But in Washington, where light reading means picking up *The New Republic, Rolling Stone*'s day is still to come.

But no one was feeling philosophical about gnat bites from the world of rock when the issue was hot off the press, and copies were being marked up to indicate the juicier quotes. The day after the story came out, Dash walked into the tacky auditorium that has been converted, Resurrection City-style, into committee headquarters, where he was surrounded by staff members "in a state of emotional pique." Just what happened from that point on is hard to pin down with great precision, since Armstrong refuses to comment at all and the staff members in general speak with all the forthcomingness of McGeorge Bundy and Robert McNamara musing on the early days of the war. Dash, who was the key man in the Armstrong deliberations, is the only one who will speak for the record, and while he seems candid and sweetly reasonable, he does have an interest in imparting a certain perspective on the affair.

As reconstructed, the events were roughly these: From the first, it was clear that the dominant emotion was an outraged response for which "pique" seems an inadequate term. The article had hit the committee when it was ripe for a bit of fratricide. All through the hearings, Dash had encouraged "healthy" competition among his three investigative teams and among their leaders, Lenzner, Dorsen, and Hamilton. In their months as televised celebrities, the staff members simply hadn't had time to vent whatever hostilities the friendly competition was causing. The lackluster hearings in late summer which turned the daytime airwaves back to the soap operas not only left the staff with a little more time for quarreling, but also brought knocks from the press for "incompetence" and sloppy performance, which improved no one's temper.

Lowell Weicker, Fred Thompson and Howard Bak

Out of the Closet

Into this atmosphere came just the kind of article designed to enrage everyone. The whole committee had been put on the roaster before, but the criticism had mainly come from the likes of William Safire, the *Manchester Union-Leader*, and the

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Senate's own version of Bebe Rebozo, Edward Gurney. While Safire could be considered the enemy, the quotes in the Crouse article were interpreted by the members as an inside job. Their potential for havoc was increased because they did what all good reporting about Congress should do—attach names and personalities to the anonymous creatures who run around as The Staff. Committee staffs in general, and this one in particular, are more important than the big-name Congressmen in determining how well

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an investigation is carried out, but in the six months of Watergate hearings the public had come to know Joseph Montoya's every quirk while hearing nothing at all about Mark Lackritz, Bill Shure, Scott Armstrong, Polly Dement, or the several dozen other investigators who were actually working on Haldeman, Mitchell, and Hunt. What "in-depth" coverage there was of the staff was confined to the poobahs—Dash, minority counsel Fred Thompson, deputy counsel Rufus Edmisten and Lenzner-Hamilton-Dorsen. So in taking on the staff, Crouse was doing an important job, but one not likely to please its subjects.

While the wounds were still fresh, on the weekend on November 10-11, the investigation got under way. Dash ordered his investigators to prepare a report on the case, in which offending quotes would be matched with possible sources. Despite early speculation that the source had to be one of the handful of people who came off well in the article—Lowell Weicker and his associates, and Rufus Edmisten (Armstrong was not mentioned)—Armstrong soon saved everyone the trouble of a manhunt by admitting that he had been responsible. As he explained it to Dash and later to the staff members, he wouldn't retract the names he'd called people, but he hadn't really expected to see them appear in print.

"He knew he'd been foolish and indiscreet, and he felt terrible about it," Dash says. Another staff member adds, "I got the feeling that Tim came to Scott and said, 'I hear Terry Lenzner's a prima donna, is that true?' and Scott didn't deny it." Whatever the circumstances of the quotations, by November 12 there was no secret about their source.

But finding a leak who would admit he'd been a leak solved one problem only to pose a more complicated and far more time-consuming one. Someone had to figure out what to do about it. That someone quickly turned out to be Dash, to whom the Senators were only too pleased to leave the messy role of internal disciplinarian. When Sam Ervin had first heard of the case, he had urged Dash to dump Armstrong. But he did so only because he thought the Crouse article incriminated Armstrong in previous leaks of substantive material from the committee's files. Told differently by Dash, Ervin happily stayed out of the matter.

Over the next week Dash and his employees spent between a few and a lot of hours each day on the case. Contact had to be maintained between Armstrong and his victims, the victims and Dash, Dash and Armstrong, and the press and no one. Armstrong made a series of apologies

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Sam Dash and Terry Lenzner

and explanations, and Dash, while emphasizing the final decision would be his alone, collected advice.

The thoughts running through Dash's mind during this week have been subject to differing interpretations. The day after the suspension, *The New York Times* quoted an unnamed source as saying "The minute Sam saw that part about his being an egomaniac, he went bananas. Nobody else who mattered gave a damn but Dash."

Dash himself vehemently denies that he was working personal vengeance on Armstrong, and of all the people on the staff who now say they just shrugged off the article's criticisms, Dash is most convincing. In person he lacks the grating traits of his TV persona, especially the droning artlessness of speech and the guise of cardboard superiority. When he says that he admired Scott, that he was anguished about what to do, he conveys the genuine impression of a man caught in a vise: "I had hired Scott at the recommendation of Bob Woodward at *The Washington Post*, who told me that if I wanted a tough investigator, someone with guts and integrity who wouldn't leak, this was the guy to get. Because of Scott's friendship with Woodward, he had been suspected of leaks before. I had checked all those reports out, and I firmly rejected the suggestion that he had leaked before. He had been careless and naive in this case, but I was very moved by his personal integrity and guts in admitting what he'd done."

Dash knew too that this was no marginal performer on the block but one of his stronger investigators. Armstrong had been working on Bebe Rebozo's affairs, and he was regarded as one of the best investigators on Terry Lenzner's sharp team. Lenzner himself, who was by no means flattered in the Crouse article and who says Armstrong made a "serious error of judgment," strongly urged Dash not to punish Armstrong.

But Lenzner wasn't the only one giving Dash advice. Pushing from the other side were, according to most reports, minority counsel Fred Thompson (a "twisted shit" in the words of a non-Armstrong source quoted in the story) and three others offended by the article: Dorsen, Michael Herschman, and Wayne Bishop. James Hamilton, who weeks later was still irate about the piece, removed himself from the deliberations. The others did not.

As he turned the matter over in his

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mind, Dash must have come upon one especially compelling argument for clemency. Given that Armstrong had been indiscreet or even foolish, the best way to handle the case might be not to cast the sinner out, but to tell him he'd made a mistake, make sure everyone knew it was a mistake, and then stick with him in hopes that the staff would emerge with greater morale and enhanced respect for its leader. Dash himself had once profited from such a policy of forgiveness. Full of his own authority, he had decided one day early in the committee's history to hold an impromptu Saturday morning press conference. This left the committee's senators in varying degrees of ire. Several wanted to fire him on the spot, but after reflection they considered that internal vengeance would do far more harm than good.

But even as he remembered the clemency extended to him, and even as he stressed that he would decide by himself free of external pressure, Dash knew it was delusion to ignore the accumulated bitterness on the staff. In an interview, he made a wan attempt to recapture the vindictive mood, saying that everyone had been working hard and that internal criticism like Armstrong's makes "you go home sick and want to vomit. I've got a tough enough skin myself, but I was bothered to see the staff so upset. It could interfere with our work. There was a danger that we'd be 'wallowing' in this affair for too long." In the back of Dash's mind too was the likelihood of losing some of his other investigators if he didn't punish Armstrong. The whole affair seems to have been played out under such pressure that no one was able to step back and think about the most important question the incident raised—why the staff had become so Balkanized and suspicious that these few off-hand quotes would throw it into an uproar.

So, after a Friday morning session generally described as a "bloodletting," and after telling Armstrong on Saturday what he had decided, Dash gathered the staff on Monday, November 19, and announced his "compromise" decision: Armstrong would be suspended without pay for a month, but could then return to the fold.

In remarks quoted by the Associated Press that day, Dash said that Armstrong "had broken a pretty iron-bound rule that is broken too often." Those who understood Dash's allusion to the no-leak rule might have been permitted a chortle at the "iron-bound" description. During its relatively brief existence the committee has leaked an astonishing amount of material. After a while it became the custom for the committee's bombshells to make headlines in *The Washington Post*—the day *before* the hearings. Just about the only major news items that didn't leak were Alexander Butterfield's testimony about the White House taping system, and the "Colson memorandum" that linked Nixon to ITT. Before Armstrong, none of the sources had been caught, and Armstrong would probably have escaped if he hadn't confessed. The poor capture record is, in fact, to Dash's credit, for he has refused helpful suggestions from people like Gurney that he run all his staff members through a lie detector to find the culprits. Even if he caught the small fry, of course, the leaks would not have stopped, for the senators themselves were enjoying the thrill of feeding the press.

Of course Armstrong's case was special—why else was he the only one punished? The committee's explanation is that he was the only one caught. "Scott was unique because he was man enough to admit it," Terry Lenzner says.

Fine. But to outsiders another peculiarity of the case is just too tempting to ignore. Armstrong's leak was the only one that had nothing to do with the substance of the investigation. These were not John Dean's diaries he was feeding out or the latest summary from L. Patrick Gray. They were only comments on the people he worked with, a group like any other

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which contained its share of incompetents and lightweights. Nothing he said affected the rights of witnesses, or the content of the study, or anything but his colleagues on the staff. "Scott didn't tell me a single substantive thing," Crouse says. "Everyone else on the staff has told a member of the press some substantive detail. Scott has not. All he told me was about some of the folks on the staff and how they worked."

This feature of the Armstrong case did not escape the notice of that enthusiastic scourge of the Ervin committee, Senator James Buckley. In a Senate speech on November 21 he said:

> You can imagine my delight when I saw the headline suggesting that the chairman had changed his mind and that those who had abused the rules of the committee by leaking confidential information were being investigated and punished.
>
> Alas, such is not the case. As I read the story, I discovered that it was not concern for the rights of witnesses that brought about the suspension but the concern of certain high-ranking staff members for their own image. . . . I am puzzled that the committee should feel it could devote more than a week to search for someone who said unpleasant things about Mr. Dash—whether these judgments are true or not is irrelevant to my point—but will not spend five minutes in an attempt to identify those committee staffers who leak confidential information involving outsiders. In his letter to me, the chairman of the select committee dismissed Patrick Buchanan's complaints over abuses by staff members by quoting Truman's aphorism, 'If you can't stand the heat get out of the kitchen.' Yet when one of the staffers gave a reporter his nonprivileged views on Mr. Dash, the matter was considered so serious as to warrant a full-scale investigation lasting eight days.

Out of the Blue

The truth of the article's allegations is hard to determine. Now that comments are on the record, staff members insist that the article was "unfair" and "a hatchet job." On the other hand, it is fair to note that the criticisms did not exactly come out of the blue. For example, as soon as one Washington reporter saw a passage in the story about an investigator "so bad he might single-handedly put the committee out of business with one of his fuck-ups," he telephoned Crouse to say he knew exactly who the story was referring to.

But as Buckley suggested, the accuracy of the criticisms is not really the point. True or false they provoked the committee to a reaction, and it is there we may go for education. The televised hearings had jacked staffers up one level of public visibility; when they watched the taped replays at night they must have thought, "My God, do I really slouch like that?" Political caricature is one step higher, and Crouse was the first one to take them there. By the time he got to be Secretary of Defense, Melvin Laird must not have minded too much to see cartoonists draw his head in the shape of a bomb—that was how the game was played. But committee staffers like James Hamilton hadn't been parodied before, and it came as a shock.

Hamilton is a good example of the committee's peculiar reaction to the story. He was the lawyer who prepared a legal brief that Judge Sirica eventually threw out of court, and Crouse's article savaged him for that. Hamilton had worked for six years in Covington and Burling, one of Washington's nut-cracking law firms, before coming to the committee, and he could take professional criticism with equanimity: "If someone doesn't approve of the way I do a job, it doesn't worry me. I can weigh his opinion against those who have congratulated me." What really seems to bother Hamilton is the "knit-brow" passage:

> Hamilton is a slim, dark-haired young man with a blank face and a habit of knitting his brow when asked a question. "You walk into Jim's office and ask him a question," says a Majority staffer. "He knits his brow and looks puzzled, and all you've asked him so far is, 'How are you today, Jim?' "

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"A person can take one feature like that and make you look like a fool," Hamilton says. It is fruitless to reply that this hardly represents the far extreme of political caricature, or that Hamilton does indeed have the kind of worried face often seen staring into destiny from the pages of high school yearbooks. It is only natural that the people who were satirized felt like throttling either Crouse or Armstrong. The complaint against them is that they let themselves be diverted from their real task by an essentially trivial irritant.

Monster Stories

The complaint is one of style, of instinct and reaction. The committee was faced with a temptation infinitely less serious than those the Nixon Administration encountered in the days of the "national security" leaks. There was no Daniel Ellsberg here, not even columnists revealing new investigative plans. All that was at stake was internal cohesion, a serious enough matter but not one presenting the kind of drastic challenge the Nixon White House mistakenly saw in Ellsberg. How did the committee respond? With the same reflexes as those that led to the plumbers operation: they launched an investigation, invested a week in deliberations, and became more impassioned by the whole affair than by much of their real work. Like the Nixon Administration, the committee seemed not to discriminate between the leaks that genuinely threaten the national security or the fair operation of justice, and those that were merely irritating. In the President's case, data about the Polaris submarine is an illustration of the kind of information the country couldn't afford to leak. But 98 per cent of the other leaks that caused the plumber-mania—including Ellsberg's embarrassing but purely historical revelations—had no conceivable relation to our national safety and well-being. The committee, too, had its genuine secrets to guard (though it often failed in this task), but Armstrong's quips just didn't fit that

Sam Dash and Jim Hamilton

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category.

To be sure, the committee's actions were not remotely comparable to Nixon's; no civil rights were abused nor laws violated. But the mentality which forced Dash to suspend Armstrong was a more civilized version of the philosophy this committee has taught us to denounce in Nixon.

And that is precisely the difficulty: that the lessons have all been about Nixon and his band of henchmen and not about the way men go wrong when close to power. Everything has encouraged us to identify monstrous acts with the monsters who committed them, to assume that only a Haldeman or a Mitchell could carry out the wiretap plans, and that only a Nixon could create the atmosphere in which all else flourished. If we are honest with ourselves we may admit that many of the facts piled up in the last year have been side-dressing to our opinion of Nixon. Many of us suspected all along that he was a crook and a tyrant; we felt contempt for the cronies he brought in to serve with him. And look! The facts have proven us right.

Viewed in this way the whole Watergate affair has an illustrative value but not an educational one. Confined to monsters it yields us only lessons about monsters—it is as if we assumed that World War II meant only that Hitler was demonic and the German people obedient, and not that the human capacity for evil was so easy to tap. It is no wonder that the Watergate committee did not detect the singular gracelessness of its position, in which the very group that had been applying Public Scrutiny as the remedy for all seamy situations suddenly drew into its shell when the circumstances were reversed. They couldn't see themselves reacting in the same way as Nixon, because they knew they were better people than Nixon's group.

They are indeed superior—Dash, Hamilton, Dorsen, and the rest are intelligent, engaging, honest. These decent people, in power, succumbed to a temptation of power. Their reaction suggests that the most important lessons of Watergate are not about the enemies list or the corrupt values of Southern California, Florida, and the other places that make up what Kirkpatrick Sale has called the "Southern Rim," but rather about the way men in positions of responsibility can fail, even honest, likeable men. This truth has been grasped in part. Long before the Armstrong episode, Sam Dash fired a committee investigator for using the committee's name and stationery for private purposes. "It was a microcosm of the whole problem we were investigating, the misuse of public power," Dash said. Yet the committee's behavior in the week of November 12 shows that the implication has not been fully understood.

The question David Halberstam posed in *The Best and The Brightest* was how so able a group as the Kennedy men could do so much harm. It is an interesting question, but the fact that we would not bother to ask it about the Nixon men shows how committed we still are to the monster theory of government failure. The Watergate case can offer an enormous number of lessons about how power corrupts and government fails—"government" in a sense not confined to Washington, but embracing the whole series of institutions by which we manage our lives. The last year has provided fragments that might answer Halberstam's question, or help us understand why Joseph Seamans, former Secretary of the Air Force, as decent and urbane a man as any in the government, led the campaign to get rid of Ernest Fitzgerald, or why good men running agencies like the Peace Corps or the Environmental Protection Agency soon find themselves hunting the leakers as if they were working in the Nixon White House. But if we assume that the Watergate case applies only to Nixon and his monsters, the lessons will be lost. When we understand that they apply to good men as well, we will be ready to learn. ■

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The ABA: The Rhetoric Has Changed but the Morality Lingers On

by Mark Green

There is in lawyers a political itch, a yearning to do more than polish off an error-free testamentary trust. This instinct especially infects the American Bar Association (ABA), that conglomeration of 170,000 lawyers which seeks to imprint its influence on public affairs. As we glance about the public landscape, the ABA's prominence is apparent. Special Prosecutor Leon Jaworski is a former president of the ABA, as is one of the men he may appear before, Supreme Court Justice Lewis Powell. Another earlier ABA head, Charles Rhyne, represents Rose Mary Woods, while the current ABA president, Chesterfield Smith, leads a public outcry against Richard Nixon's lawlessness.

The ABA also exerts its influence in less visible ways, especially through its committees and "sections," which have become a kind of farm system for government jobs. "Holding high office in the ABA is virtually a prerequisite to an important position in the Treasury or IRS," says Thomas Field, a former Treasury lawyer who now directs a public interest tax group, Taxation with Representation. The Nixon Administration's first commissioner of Internal Revenue, Randolph Thrower, was a former chairman of the ABA's Tax Section. So was the current IRS commissioner, Donald Alexander. The chairman of the Securities and Exchange Commission, Roy Garrett, once directed the ABA's section on Corporation, Banking, and Business Law. For one memorable period in 1971-1972, the two federal officials in charge of the nation's antitrust policy—Miles Kirkpatrick, chairman of the Federal Trade Commission, and Richard McLaren, head of the Justice Department's Antitrust division—were former chairmen of the ABA's Antitrust Section.

Mark Green is writing a book on lawyers in Washington and editing with Ralph Nader Verdicts on Lawyers.

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The most remarkable feature of the ABA story has been its success in promoting this "public service" side of its activities. But there is more to the picture than contributing professional talents to the cause of good government. Those who have watched the Grocery Manufacturers of America struggle to defeat food adulteration legislation will not be astounded by the ABA's illustration of how public service and self-service do not always overlap. Prominent and visible? Yes, the ABA is that. But for whom? And for what?

Partners in Progress—ABA and AMA

Throughout most of its 97-year history, the ABA has shown a sensitivity to social concerns rivaling that of the American Medical Association. In the 1920s, the ABA attacked the Sherman Antitrust Act as "unsound [and] uncertain," and condemned the income tax amendment as an "encroachment on private wealth." During the 1930s, the ABA argued that the government had no constitutional right to regulate commercial production and opposed proposals ranging from child labor laws to minimum wage provisions. By the mid-1950s, the association had underwritten McCarthyism by seeking to purge from its profession suspected Communists.

For the past two decades the ABA has shown itself adept at the politics of self-interest. This is hardly unusual for a trade association, but that is precisely what the ABA insists it is not. It is "guided by a desire to serve the country and not itself" claimed Leon Jaworski in 1971 when he was ABA president. Was it sheer self-sacrifice, then, that led the ABA in 1955 to recommend limiting federal income tax rates to 25 per cent so as "to end confiscatory federal taxation"? And what are we to make of the following activities undertaken in the past 20 years:

- continuing the struggle for improved tax benefits for self-employed people (like lawyers) which, judging by the emphasis in the ABA's Washington newsletter, was the major legislative issue of the 60s;
- promoting a bill to remove the ceilings on legal fees in federal departments;
- fighting proposals to cut legal fees at HUD mortgage closings and to eliminate lawyers altogether at bankruptcy proceedings;

Wide World Photos

- opposing the Consumer Credit Labeling Act, the Fair Packaging and Labeling Act, and citizen suits to help enforce environmental quality standards.

Perhaps the most provocative aspect of the ABA's traditional Social Darwinism is how quickly and thoroughly this impression has been erased from the public mind. At the ABA convention last summer in Washington, D. C., the lawyers were congratulated not only by themselves (this is not uncommon), but also by *The New York Times*, which ran an editorial urging legal reformers to work from inside the ABA rather than to undermine it. Inspiring this point of view were some of the ABA's more progressive resolutions, such as those recommending decriminalization of marijuana use and adult sex offenses, and exhortations by Chesterfield Smith, the ABA's new president, on legal reform generally.

But beneath the haze of reform, the ABA is still often one more association looking out for its own.

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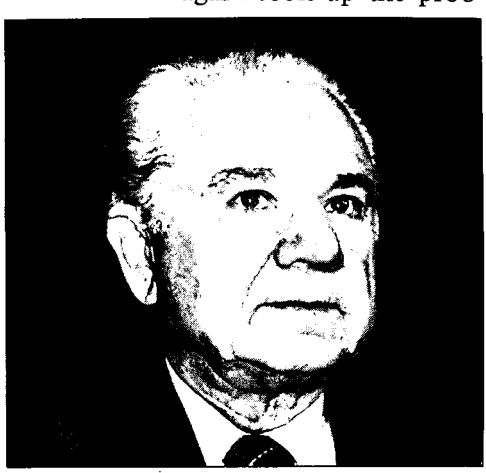
When the squeeze is on, the ABA will sacrifice subtlety and good name to protect those interests vital to its lawyers or their major clients.

Consider, for the most obvious examples, the ABA positions on the two most critical issues challenging the existing structure and income of the legal profession today—no-fault auto insurance and pre-paid legal services.

Defenders of Morality

They may hate themselves in the morning, but the lawyers keep resisting the no-fault proposals. Crash litigation is a nuisance to everyone except lawyers, for whom it produces 25 per cent of the gross legal product. So, in 1969, the ABA's House of Delegates came out against no-fault and for the "fault" system because of "the moral values which underlie the almost instinctive feeling that persons guilty of wrongful conduct" should pay—this despite the fact that it is not the wrongdoer who pays in an accident, but his or her insurance company.

The ABA again took up the problem in 1972 when it created a Special Committee on Automobile Insurance Legislation. The committee's composition gave a hint of the care and objectivity likely to go into developing the ABA's position. All 10 people who have served on the committee have been engaged in and collecting fees from auto negligence cases, the very type of litigation they have been asked to consider abolishing.



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Although ABA President Robert Meserve last year privately confided that he hoped the ABA would take no position on this controversial issue, the association declared itself "opposed to any federal 'no-fault' insurance legislation." In a memorable display of institutional loyalty, Meserve then became the Association's major witness against Senator Philip Hart's national no-fault plan. Meserve stoutly argued his group's position, but with more than a little defensiveness. "This is not a matter of lawyer protection," he said, "it is a matter of client protection."

The ABA has exhibited a similar distaste for prepaid legal insurance plans. In the early 1960s it feared such plans would undermine the fee-for-service system, the fiscal basis of the profession. The association went so far in its opposition as to file an amicus brief in the Supreme Court case of *Brotherhood of Railroad Trainmen v. Virginia State Bar*. The brief argued that a union's prepaid plan was "unauthorized practice." Why? Because the *union* would be picking attorneys for its clients; this "deprives the individual of his freedom to choose his own attorney"—a point which neglects the reality that the "freedom to choose" is worthless for those who can't afford a lawyer. And soliciting for business, continued the ABA, "would be intolerable."

Like Britain struggling to maintain its empire, the ABA has been forced to do silly things to defend its professional preserve. Bans on soliciting and advertising, along with rules discouraging price competition, keep the victims ignorant of, and priced out of, their legal rights. Thus have "ethical" rules been deployed to enhance professional income. The ABA's position was, in addition, unconstitutional. In *Brotherhood of Railroad Trainmen* and three other cases, the Supreme Court held that prepaid legal plans gave certain groups access to the courts and therefore was part of the constitutional right of assembly and

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speech.

These decisions compelled the ABA to alter its opposition, and in 1969 it revised its Canons of Ethics, grudgingly. It condoned prepaid legal service groups *but* stipulated that their plans had to be non-profit and incidental to a group with a different primary purpose.

Recently the lawyers have mellowed as they have contemplated the experience of their medical colleagues. Two decades ago the AMA was calling prepaid health insurance socialistic, but today Blue Cross and Blue Shield, not to mention the pot of gold called Medicare, provide the medical profession with much of its lucrative income. The ABA is now moving toward cautious support of some prepaid plans and hopes to resolve the issue at its February, 1974, meeting.

But perhaps the ABA couldn't really help itself on no-fault and prepaid—these were issues where all the laws of self-preservation were pushing one way. But even when the pressure is not so great, the ABA has been strikingly consistent in its preference for doing well rather than doing good. Consider the ABA sections. Here Congress and the ABA have much in common: each is a bulky body which has delegated policy-making responsibility to smaller, more specialized committees. Unfortunately the parallels do not stop there. Just as many members of the House Banking Committee, for example, have significant financial holdings, so the ABA sections are marred by systematic conflicts of interest. Here are recent chairmen, with their major clients, of eight ABA sections and subcommittees:

- Committee on Aviation—Harold L. Russell, Eastern Airlines.
- Committee on Railroads—James N. Ogden, vice president and general counsel, Gulf Mobile and Ohio Railroad Co.
- Committee on Environmental Controls—Evans Brasfield, Humble Oil and General Motors.
- Committee on Forest Resources—Norman J. Wiener, Georgia-Pacific.
- Section on Antitrust Law—Thomas M. Scanlon, IBM and Shell Oil.
- Section on Insurance, Negligence, and Compensation Law—G. Robert Muchemore, vice president and general counsel, Mutual of Omaha Insurance.
- Section on Natural Resources Law—Northcutt Ely, Gulf Oil.
- Section on Public Utility Law—F. Mark Garlinghouse, AT&T.

These conflicts are not merely theoretical, as a focus on four ABA sections reveals:

Hart Attack

In 1969 the ABA's 7,500-member Antitrust Section created a "Special Committee on Consumer Legislation" to analyze pending legislation which would permit consumer class-action suits. The committee exercised its critical faculties with relish. In its report, sent to the Senate Commerce Committee, it ridiculed consumer class actions as unwise, unnecessary, and inefficient, a burden to the courts and a potential bonanza to *plaintiffs'* lawyers. What it did not mention was the financial stake that *defendants'* lawyers and their clients had in the issue. Perhaps this was because all nine members of this special committee were corporate defense lawyers who had been handpicked by section chairman Frederick Rowe, general counsel of the Grocery Manufacturers of America and a name partner in the large corporate law firm of Kirkland, Ellis, and Rowe. The stacking was a little too obvious even by ABA standards, and journalists and congressmen soon discredited the report.

A freshly chastised Antitrust Section shortly thereafter did adopt a new policy against the establishment of such ad hoc committees. When recommendations were to be made on pending legislation, the existing committees would do the job. It was a

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change long overdue—and short-lived, for in 1972 the section's leadership casually appointed two new "special committees" to evaluate the two most controversial antitrust issues of the year: Senator Philip Hart's industrial deconcentration bill and Senator John Tunney's antitrust consent decree bill. In all, section chairman Julian von Kalinowski appointed seven special committees, leading one reform-minded member of the section, Gerald Kandler, to lament that his "worst fears about special committees have been confirmed, since the members appointed to serve all appear to be from the so-called 'establishment' of the section and clearly do not represent a cross-section of the 7,500 dues-paying members."

The special committees studying the Tunney and Hart proposals both recommended against the legislation. This can hardly be surprising, given the section's prior history: it has supported businesses' right to deduct "treble damage" penalty payments from their taxable income, has opposed legislation to permit government and private suits for damages and injunctions under the Clayton Act, has resisted attempts to raise the maximum fines that can be levied against individuals under the Sherman Antitrust Act, and has tried to defeat legislation that would enlarge the Federal Trade Commission's rule-making power.

On the other hand, the section has risen at least twice above its normal behavior, once to oppose a plan to exempt joint newspaper publishing ventures from antitrust provisions, and once to urge the Senate Judiciary Committee to withhold action on a bill that would have exempted soft drink bottlers from antitrust enforcement. The Antitrust Section's bottlers position so surprised one skeptical Judiciary Committee lawyer that he only half-jokingly speculated, "Maybe one reason they opposed it was that they were getting fees from that litigation."

There have been some attempts to democratize the Antitrust section. Former government antitrust lawyer and section member Jerome Hochberg wrote Antitrust Section chairman Fred Rowe after the class action report was released:

> For too many years this Section and the Association as a whole have been run by a clique of attorneys who represent entrenched interests in the various communities across the United States without regard to the views or concerns of other attorneys, both members and non-members. The procedures for running the organization are undemocratic and are geared so as to make it almost impossible for individuals with contrary views to be heard and gain acceptance for their position.

Hochberg suggested a variety of reforms, and even got the section chairman to begin circulating a quarterly report to the members. In the end, Hochberg was rebuffed; the Eph Jacobs case helps illustrate how and why. Ephraim Jacobs is a highly respected Washington lawyer who was in line to become the Antitrust Section's representative to the ABA House of Delegates. But Jacobs was also a lawyer for plaintiffs in an antitrust case that challenged some of the major drug companies. A defense lawyer for one of the drug firms, who was sitting on the Antitrust Section body choosing nominees for the House of Delegates post, eliminated Jacobs from consideration. Jacobs and his colleagues decided not to launch an all-out fight for this largely honorific post, but they came to understand who was running the antitrust show.

Hat Trick

Another example of the conflict-of-interest problem is in the Section on Patent, Trademark and Copyright Law. A former member of the section's copyright division complained that "if people ever wear two hats, they were it [sic] there. The lawyers all represent proprietary interests, not the interests of users." On the pending copyright issues, the proprietary interests always prevail, he said. This

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member, essentially the only representative of user interests, eventually quit. "I was just a foil for them."

Within the section's Patent division is a small clique called "the Tuesday Group." The group first drafted the "Scott Amendments"—proposals which would legalize many patent practices now prohibited under the antitrust laws—and then convinced Senator Hugh Scott to introduce the package to Congress. One member of the Tuesday Group was attorney Arthur Seidel, from a Milwaukee corporate law firm whose clients (like Dupont and General Electric) had a keen interest in seeing the Scott Amendments passed. As chairman of the Patent Section's committee dealing with the Scott Amendments, he urged his fellow committee members to lobby for the measure. ("This education of Senators does not seem to be within the purview of our committee, but I trust many of you can devote some personal efforts along such lines," he wrote in a memorandum.)

The present chairman of the Patent Section is Theodore Bowes, former member of the Tuesday Group, former general patent counsel at Westinghouse Electric, and presently executive director of Intellectual Property Owners, Inc., (IPO), a group which objects to the "whittl[ing] away at the rights of patent owners." Bowes has shown some irritation at public criticism of his patent advocacy. "Nothing in the Scott Amendments," he has said, "was intended to or would expand the patent monopoly, as even a casual reading would make plain." Not many would agree with him. Among the doubters are 40 law professors (who sent a petition to the Senate subcommittee on Patents, Trademarks and Copyrights), former ABA president Bernard Segal, Senator Philip Hart, and former Justice Department antitrust chief Richard McLaren—all of whom understood that expansion of the patent monopoly is precisely what the Scott Amendments intend. In a private letter to Hart, McLaren warned of the ongoing antitrust cases which would have to be dropped if the bill became law; these included the prominent patent case, *United States v. Westinghouse-Mitsubishi*, a case that could not have escaped Bowes' attention, given his past position with Westinghouse. Bowes has personally lobbied on Capitol Hill to delay action on the Hart and Administration reform proposals. He offers, instead, his own Patent Section's bill, which he presents as "the ABA bill." In fact, the ABA House of Delegates has never approved his proposal.

Westinghouse, the Tuesday Group, IPO, the ABA, the Patent Section—Ted Bowes is a man of many hats. Patent reformers on Capitol Hill are not pleased with his versatility. "The ABA and the American Patent Law Association," said a Senate Antitrust subcommittee lawyer, "are the two groups consistently throwing monkey wrenches into all serious efforts to reform the patent system."

Assault Beneath the Seas

The subcommittees comprising the Natural Resources Section are headed by lawyers whose clients read like a Sierra Club enemies list. William Forman, chairman of the Hard Minerals subcommittee, represents Anaconda Copper and U. S. Gypsum; Charles Wheeler of the Oil subcommittee represents Cities Service; Terry Noble Fiske of the Public Lands and Land Use subcommittee is the lawyer for four associations of contractors and realtors, and his subcommittee's vice chairman is from a firm representing American Smelting and Refining, Johns-Manville, and Standard Oil of California.

In 1973 the Natural Resources Section sent the ABA House of Delegates a package of four complicated resolutions. The first noted that there would be a serious energy crisis and urged Congress to undertake long-range planning. Cognizant of the lawyers' role as midwife to new gov-

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ernment projects, the section offered to "tender [the ABA's] good offices" to be the appropriate bodies for the "drafting and implementation of legislation designed to maximize supplies of energy. . . . " A second resolution made the same offer on non-fuel minerals. A third recommended that the government vigorously protect the contract and property rights of investors who have placed their money overseas. The fourth resolution had to do with control of the international seabed. Its importance was explained by Jonathan Adler, an environmental lawyer from California:

The final resolution is an insidious combination of motherhood, apple-pie and an audacious attempt at such a massive raid on the resources of the international seabed beyond the territorial limit that it prompted three dissents from members of the section's marine resources committee. . . . The resolution opposes admirable efforts by the State Department, in a draft treaty on deep sea resources, to recognize a "common heritage of mankind" in the oil, gas and minerals which technology is beginning to make recoverable from the deep seabed, and to establish a comprehensive international regime for their exploitation which would benefit non-coastal and less-developed coastal nations in addition to coastal nations and highly-developed technologies. It would preserve for American sovereignty, and thus for American corporations, resources of the so-called "continental margins" extending beyond the continental shelf hundreds of miles out to sea, under an elastic "exploitability" clause—claimed to be a recognized principle of international law of the sea. The rule would mean, in essence, "you can keep not only what you can get but everything landward as well."

This resolution was produced, notes Adler, by a Marine Resources subcommittee whose chairman represents Chevron and whose predecessor was a lobbyist for the American Petroleum Institute. Comprising the section's eight-person ruling council is an Oklahoma law professor, three attorneys from firms representing Humble Oil, Kaiser Steel, and other gas and oil companies, and four corporate general counsels from Marathon, Humble, Shell, and Texaco.

Rising Above Self-Interest

The Tax Section is clearly one of the ABA's most influential units. It regularly sits down with Treasury officials and congressional leaders to convey its opinions on pressing tax problems. On May 21, 1973, for example, nine leaders of the Tax Section met with 10 Treasury representatives to cover an agenda of 15 tax issues.* The obvious intimacy

* As summarized by a Tax Section memorandum, the subjects ranged from "Suits to Compel Action by the Treasury or Internal Revenue Service" ("Mr. Asbill [the recent section chairman] asked whether the Committee might be helpful to the Treasury") to the "Status of Proposed Revenue Ruling on Prepayment of Feed Expenses" ("The Treasury would be interested in participating in the meeting of the section's committee on agricultural problems with the IRS on its drafts on a ruling re prepayment of feed expenses") to a final discussion of "The Federal Advisory Committee Act" ("it would be disastrous if the Treasury could not get reactions and intelligence [from these meetings] without public meetings").

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between the public and private sectors displayed at these sessions is extraordinary, but it is not rare. Thomas Field, the former Treasury lawyer, recalls that his boss invariably used to ask whether proposed Treasury actions had been screened by the Tax Section. "They had an advance veto on proposals," said Field.

The deliberations of the Tax Section clearly have an impact beyond that of the usual private association. Most often it is an impact favoring their private clients, argued Hofstra law professor Stuart Filler, a section member. "They very rarely take off their client hats as members of the ABA," he said.

Occasionally this devotion to clients can lift Tax Section members above even the imperatives of self-interest. The corporate pension issue is an example. For years lawyers had debated the question of how much money a taxpayer should be able to deduct as a contribution toward a tax-deferred pension plan. The tax code has traditionally treated the self-employed (like lawyers) more strictly than corporate officials in this matter. Recently one Tax Section subcommittee proposed a plan that would equalize the benefits by imposing a ceiling of $10,000 for pension-plan deductions; in general this would have restricted corporate pensions and aided lawyers. "But this was overwhelmingly defeated on the floor of the Tax Section," recalls Filler. "The attorneys were pressured by their corporate clients to vote against it. People who would have been for it as lawyers were against it as retained counsel."

A former Treasury tax legislative counsel and former Tax Section participant has commented:

> The Tax Section is "business" and not "charity." It is not really surprising that the Section cannot be said to be fulfilling any obligation to the public—I don't think it has even recognized such an obligation. . . . I think it should change its character. It goes without saying that it should not be used to further narrow interests of clients. It does so today even though in less crude fashion than in the good old days. . . .
>
> Had I concluded that the Section and the ABA were amenable to change, I think I might have continued to burrow from within. I concluded, erroneously I hope, that the battle was not to be won. . . .

Rushing In Where Others Tread

ABA president Chesterfield Smith disagrees that self-dealing is a problem. "A section is financed by its own dues and all work is done by individuals who, of their own volition, band together to further a common purpose," he said. "Their interest in the subject matter is self-evident and fully disclosed." Smith referred to a conflict-of-interest resolution passed by the ABA's Board of Governors in August, 1972. It requires that "every effort should be made to obtain representation of differing views" in section appointments and that any section members involved in a recommendation or report to the House of Delegates should reveal any client interest they have in the issue. Occasionally, the association has acted affirmatively to create balance, as it did in 1970, when forming a Special Committee on Environmental Law with representatives from both industry and environmental lawyers. But judging by the one-sidedness described in the no-fault, patent, antitrust, natural resources, and tax situations, as well as by the non-disclosure of client interests, the ABA resolution seems a paper tiger.

Smith went on to insist that, anyway, "no policy is a policy of the American Bar Association until it has been adopted by the House of Delegates. The Sections only recommend to the House." This is really no more persuasive than Carl Albert insisting that House floor activity is the only thing that matters, not what Wilbur Mills and that committee of his do. For ABA sections, like congressional committees, shape legislative proposals with their "expert" hands so that their respective Houses often just follow their lead. In addition, sections

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often deal directly with congressional committees, despite an ABA policy against doing so.

In response to criticism, Bert Early, the ABA's executive director, stresses the ABA's commitment to further justice in America. It is true that the ABA has in the past decade supported proposals like OEO Legal Services, the Freedom of Information Act, and the 25th Amendment providing for presidential disability. Then of course, there were the reforms of the 1973 convention. Yet it is still difficult to confuse the ABA with Common Cause.

First, ABA members appear far less concerned with issues like presidential succession than with no-fault auto insurance or pension plans for professional corporations. "It's clearly easier to mobilize the bar on a bread-and-butter issue like this than on public interest issues," admits John Tracey of the ABA's Washington office.

Second, for every time the ABA's hands and feet patter progressively, it will also refuse to support the Genocide Convention, to oppose the Vietnam war, or to declare against hunger because these issues are considered "not germane" to the ABA's mandate. As a former ABA president warned during the hunger debate, "If this association starts running all over the lot, we will lose all the reputation that we have gained."

Third, even when it is progressive, the ABA seems to rush in where others already have trod. Of the major movements of the past decade—civil rights, consumer, anti-war, women—in none has the ABA played a leading or serious role. As a result, one has come to expect it to be largely a procedural technician on issues of law enforcement or an advocate of lawyers' benefits, but not an innovator for social justice.

And fourth, despite occasional decorous advocacy for often well-meaning policies, the ABA is careful not to challenge the interests of lawyers or their corporate clients. The ABA will take up issues like "law explorer posts" for the Boy Scouts, firearms control, and even marijuana, but not the distribution of wealth and income or high legal fees or dilatory practices by law firms or the anti-competitive structure of American industry. At its 1971 annual meeting the ABA recommended "the immediate establishment of a Commission on the Review of the National Policy Toward Gambling" but withdrew from consideration an earlier proposal by chairman Sam Dash's Criminal Law Section for a Presidential Commission on White Collar Crime. The ABA's sections condemn consumer class actions because they will (allegedly) clog the courts, but they do not condemn auto negligence cases which *do* clog the courts.

Still, the ABA is no mere American Petroleum Institute. It does not promise to reward the obedient with campaign gifts or punish the wayward with a loss of votes. Most of its $16 million staff budget supports projects for minority law students, prison reform, legal rights for the mentally disabled. Thus, it adds a dash of good works to its defense of the status quo, and it has the good sense to elect leaders, like Bernard Segal, Robert Meserve, and Chesterfield Smith, who are more liberal and sensitive than the membership itself. In so doing, the association has repaired its traditional obstructionist image and shown itself to be more than merely twisters of pretzels. But it has not taken the big step—moving away from a fretful concern with its own well-being to a serious exploration of how it could use its power to advance the cause of justice and legal equity. Fred Rodell, the rakish and scatological Yale law professor, has written that "while law is supposed to be a device to serve society. . . it is pretty hard to find a group less concerned with serving society and more concerned with serving themselves than the lawyers." Ultimately the most discernible common cause of the ABA is the needs of its lawyers and those clients whose interests they regularly attend. ■

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Ralph Nader, the Last New Dealer

by Simon Lazarus

One of the most perverse habits of the postwar liberals was their inclination to revere the New Dealers, while scorning those earlier reformers, the Progressives and Populists. Inspired by Richard Hofstadter, many liberals still understand "populism" as an epithet, connoting the naive moralism which they believe stymied early 20th-century reformers. Yet New Deal ideology was itself a variant of the populist tradition, rather than a departure from it. The New Deal version of the populist ideal was, if anything, *more* naive than the version nurtured by the old Populists and Progressives. Glib New Deal promises of a new regime conjured a moratorium on politics, during which well-intentioned reformers could actually work out new social arrangements in tune with expert definitions of the public interest.

The first generation of 20th-century reformers did not share the New Dealers' hubris about "taking control" of things. They believed that it was, as Woodrow Wilson said during the 1912 campaign, "an open question" whether government was "strong enough to overcome and rule" the private interests that dominated politics and the economy. The Progressives had a tragic sense about democracy, a sense that some inherent fault might make it impossible for democratic government to fulfill itself.

This central insight of the Progressives and the original Populists has been rediscovered. The most attractive feature of the current recrudescence

Simon Lazarus is a Washington lawyer. This article is adapted from his book, The Genteel Populists, *to be published this month by Holt, Rinehart, and Winston.*

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of populist thought is precisely this skepticism about government, this sense that American democracy is flawed. The new populists, symbolized by Ralph Nader and his organization, want to structure the American political economy in a way that will minimize its vulnerability to special-interest domination. In particular, they want "fail-safe" mechanisms that, like the initiative and recall, will permit outside forces to interrupt the routine of government and set it back on a course faithful to the public interest. In short, the new populism has brought back to left-of-center politics a profound distrust of government—not just as prosecutor or censor, not just as a threat to minorities or individuals, but as a foe of the majority, of the public itself.

But the new populists have not managed in any systematic way to reexamine regulation as a technique of reform. Like the Progressives, the new Populists are schizophrenic about government. They distrust it and at the same time they feel obliged to rely on it. Like their forebears, they have invested much of their time, energy, and prestige in championing grand regulatory designs to subject private interests to affirmative public control.

The legislative and administrative achievements of the current reform movement already approach the records established in Woodrow Wilson's first term and Franklin Roosevelt's first two terms. The movement has barely passed its adolescence, and the 1970s could prove to be the century's most productive decade, a triumph of the populist spirit, at least from the standpoint of the number of legislative victories won.

With respect to a more funda-

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mental issue, however, the outlook is not necessarily so bright. It is far from clear that the artifacts of this reform period will show more durability than their predecessors. There is nothing in the legal or political structure of the Environmental Protection Agency or the National Highway Traffic Safety Agency which encourages confidence that their zeal will long survive the passing of the popular passions that now support them.

Death to Delaware

Nader and his colleagues should not be overly faulted for the afflictions which have beset the first generation of new populist reforms. The reformers deserve more blame for the flaws in their next series of regulatory innovations. One of the items at the top of Ralph Nader's agenda for legislative action is a special Federal Corporation Agency (FCA), which would replace individual state governments as the issuer of legal charters to all major corporations. The scheme displays all the worst features of the old grand design mentality, and therefore seems fated to come to the same dismal end as the early Federal Trade Commission (FTC) and the National Industrial Recovery Act. Ralph Nader has portrayed the proposal as vital to his plans for building a more democratic America. The scheme for reform tells a great deal about the kind of America Nader wants to build.

Federal incorporation, or "federal chartering," means having the nation's 200 or so largest corporations obtain their certificates of incorporation, or legal charters, from the federal government. Until now, certificates of incorporation have been issued by the individual states. Most corporations obtain their charters from Delaware, whence they are lured by a corporation law tailored to the needs of corporate managements desirous of minimizing interference from obtrusive shareholders. If giant companies had to get their charters in Washington instead of Wilmington, Nader says, the requirement would cease to be a mere formality. The federal charter, he explains, would "make the grant of corporate status conditional on a responsiveness to well-defined *public* interest [not just private securities holders] and a *social* accounting of corporate performance." If the corporation ceased to be responsive to those "well-defined public interests," whatever they might be, then it would be punished or even perhaps lose its charter altogether.

Nader's theory appears to be that, in creating a new FCA to issue corporate charters, Congress could be persuaded to impose a slew of restrictions on corporate behavior that it would not otherwise enact. At a conference he staged in Washington in October, 1971, to launch his campaign for the FCA, he said that federal chartering would mean "strict" antitrust standards to keep corporations from retaining more than 12 per cent of their markets, "corporate democracy" provisions to "reduce the dominance of [management] oligarchies" over shareholders and bondholders, "disclosure" rules that would "end corporate secrecy," and a "constitutionalization" of the rights of corporate employees against their employers. Morton Mintz and Jerry Cohen, both close associates of Nader, added to this list in their bestseller *America, Inc.* a ban on corporate conglomeration that would mean that "RCA could be compelled to get out of book publishing and CBS to free the New York Yankees." They also suggested that some sort of general injunction against environmental offenses could be written into the charter.

The Great Leap Backward

Surely these are not all unworthy goals. But the mystery that remains is how Senator James B. Eastland will be hoodwinked into letting them pass his Judiciary Committee wrapped in a "federal incorporation" package when he would not do so if they were introduced separately as antitrust amendments or corporate freedom of

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information bills. More in line with the relevant precedents would be a scenario in which Senator Eastland and his populist opponents collaborated in hoodwinking the public. The reformers' gaudy label would be allowed to remain attached. But it would grace a legislative pastiche that, like the original Clayton and FTC acts of Woodrow Wilson's first term, would comprise mainly innocuous provisions. This would be handed over to a new bureaucracy which, like the old FTC, would inconspicuously and, if necessary, gradually eviscerate the new law.

It is simply a delusion to expect objective standards or mechanical enforcement procedures in a scheme so general in its objectives and scope as this one is. Policy as well as politics would ensure that any federal chartering statute for the nation's biggest companies offer vague, not to say vacuous, principles for determining the requisites of getting and keeping a license. These standards would surely stop short of expressly requiring any major changes in existing corporate policies or structures. Instead the law would pass the buck to the new agency. Though this agency would in theory be permitted to invoke the new enforcement tool of revoking a company's charter, in practice this sanction would be an entirely empty threat. The FCA would be no more likely to revoke the charter of GM for monopolizing auto sales than the FCC recently proved willing to consider revoking the license of WNBC-TV for flouting commission standards for broadcasting of anti-smoking spot commercials. There is no magic in the notion of a federal corporate charter that could lift the FCA above the constraints that inhibit other regulatory bureaucracies. It would soon find itself administering a highly general set of standards backed by conventional civil and criminal sanctions, doing its best (or its worst) to stretch its thin political and financial resources to meet exorbitant enforcement responsibilities.

The plain truth is that federal chartering can be seen as an inspiring cause only by those whose vision is impaired by the grand design mentality. And so it is that charter proponents are as enthusiastic as Harold Ickes once was in articulating the populist nostrum that the public through its government should (and can) "take control" of things. "A rational society," affirm Mintz and Cohen, "has long-term goals and priorities. The legitimate government should set these goals and priorities free from undue influence by the corporation." Morton Mintz is one of the best investigative reporters in Washington. Jerry Cohen, as counsel to Senator Hart's Antitrust subcommittee, spent five dramatic years exposing corporate political shenanigans in the federal bureaucracy. They are as familiar as any two men in the United States with just how free from "undue influence" regulatory agencies can be. Yet they still blithely predict that the Federal Corporation Agency will write "goals and priorities" into the charters of the corporate giants, and that the corporations in their turn will instantly comply—from top management to division head to subsidiary to sales manager to union local. "Federal chartering," Mintz and Cohen quaintly conclude, "would allow the public government to regain its proper role as *quarterback* of the economy. . . ."

Even in Progressive rhetoric it would be difficult to find a flight of populist fancy as unalloyed and unselfconscious as this athletic metaphor. But intriguingly enough, one does find in the political struggles of the Progressive era considerable attention devoted to the object of Mintz and Cohen's ardor. Indeed, federal chartering received its most sustained and serious political attention during the Republican administrations of Theodore Roosevelt and William Howard Taft. In fact, it was then the pet project of Wall Street leaders, because they believed that it would cement a cooperative rela-

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tionship between the federal government and big business. Among its most influential boosters were Judge Elbert Gary of U. S. Steel (famous for "Judge Gary's dinners" at which all members of the steel industry gathered and cordially agreed on the price they would charge for their products), John D. Rockefeller of Standard Oil, and George Perkins, prime minister of J. P. Morgan's financial and industrial empire (which included the Steel Corporation). Though their hopes for a legalized corporate state now seem somewhat overblown in view of the feckless career of the NRA in the early 1930s, their basic assumption seems as valid now as it seemed then. Instead of a functioning grand design for controlling "corporate America," federal chartering seems more likely to yield just one more captive federal regulatory agency.

Enduring Change vs. The Big Case

Yet the odds are high that the concept of the federal charter will soon become law. This is a political "natural"—perfectly attuned to liberal ideological and rhetorical convention, and an apt vehicle for accommodating the political needs of all the affected interests and participants in the enactment process. When, at an assemblage in Boston in 1971, chief executive officers of major national corporations were asked whether they expected to be covered by a federal requirement to hold a federal corporate charter, over one-half replied that they expected such legislation to pass before 1980. The remarkable thing about that informal poll is that it was taken before any legislation was introduced, and indeed before much general publicity had been given to the federal chartering idea at all. It is almost superfluous to add that the executives at the conference did not profess special concern about the prospect that they regarded as politically inevitable. They understood well that "federal charter" was merely a label, and that what mattered was not the label of the package but the contents and, especially, how and by whom the law would be administered. Their understanding of those simple facts is perhaps ultimately the surest guarantee that the proposal will, in some form at least, be enacted.

To the extent that splashy legislative reforms like federal chartering fire his enthusiasm, Nader appears to be an utterly traditional—and conventional—reformer. His goal—which even Richard Nixon could endorse if popular sentiment were to grow strong enough—is to achieve a kind of third New Deal. His strategy is to whip up public opinion to so intense—if ephemeral—a frenzy that Congress can only appease it by enacting his proposals as fast as his *pro bono publico* legislative draftsmen can turn them out.

Unfortunately, there is considerable evidence to support this conclusion in other facets of Nader's program and in his tactical *modus operandi.* His obsession with corporate bigness, itself an incident of the federal charter campaign, is one thing. Nader, and his new populist legions in general, ascribe quite marvelous qualities and effects to the prospect of a "tough" antitrust attack on big business. To be sure, wider enforcement against price-fixing (which is done by the corner druggist as much as by the steel oligopoly) would be a good thing. And even the heralded "deconcentration" lawsuits to break up "tight oligopolies" like autos and cereals and aluminum might improve economic efficiency in those (relatively few) markets.

But many new populist spokesmen would have us believe that waving a big antitrust stick would do much more. It would, they say, radically alter national patterns of economic and especially *political* power. They boast that it would hasten the millennium when Washington would no longer be what Nader has called a "bustling bazaar of accounts receivable for industry-commerce." But the sad fact is that the structure of national power has roots rather too deep to

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be shaken by a few, or even a good many, suits under the Sherman Act. ITT, one of the two most prominent targets of Nader's efforts to expose and punish big-time bribery in contemporary Washington, is a very large corporation. But Nader's second target, the national dairy lobby, is a confederation of very small entrepreneurs. Once they become as well-organized as these milk producers, small entrepreneurs appear to be just as ruthless and effective as an ITT. The auto industry will be no less powerful in Washington or Lansing if the variety of corporate labels on auto factory doors increases from three to six or eight (or 80 for that matter).

What a spate of antitrust lawsuits, whether or not spurred by a new antitrust statute, could produce, apart from some marginal improvements in the efficiency of certain selected industries, is high political drama. Accordingly, the striking aspect of the new populist antitrust campaign is not *that* the movement is promoting antitrust but the *way* it is promoting antitrust. The goal implicit in new populist propaganda tactics seems less the modification of routine administrative policy than the preparation of public opinion—not for enduring change but for the "big case." Whether they realize it or not, the new populists are investing most of their antitrust resources into building precisely the kind of popular mood that Teddy Roosevelt handily appeased with his "symbolic" victory over the House of Morgan in the *Northern Securities* prosecution of 1903.

Ralph Nader's vision of the future for which he is aiming, insofar as that vision is revealed through most of his current propaganda and legislative activities, is that which motivated his Progressive and New Deal antecedents. It is the ideal of the grand design for democracy, the notion that the public can, through legislation and regulation, exercise affirmative sovereignty over corporate power. ■

You might as well laugh!

DIRTY TRICKS

or, Nick Noxin's Natural Nobility

JOHN SEELYE

An inspiring moral tale for this point in time of a young California lad's onward and upward struggles from humble beginnings and against all odds; of his encounters with those who threaten to compromise his natural nobility; of his cheerful pluck and determination, his ability to cope with slanders, and his abiding faith that "we make use of adversity, for if two wrongs do not make a right, it is an ill wind that blows no good."

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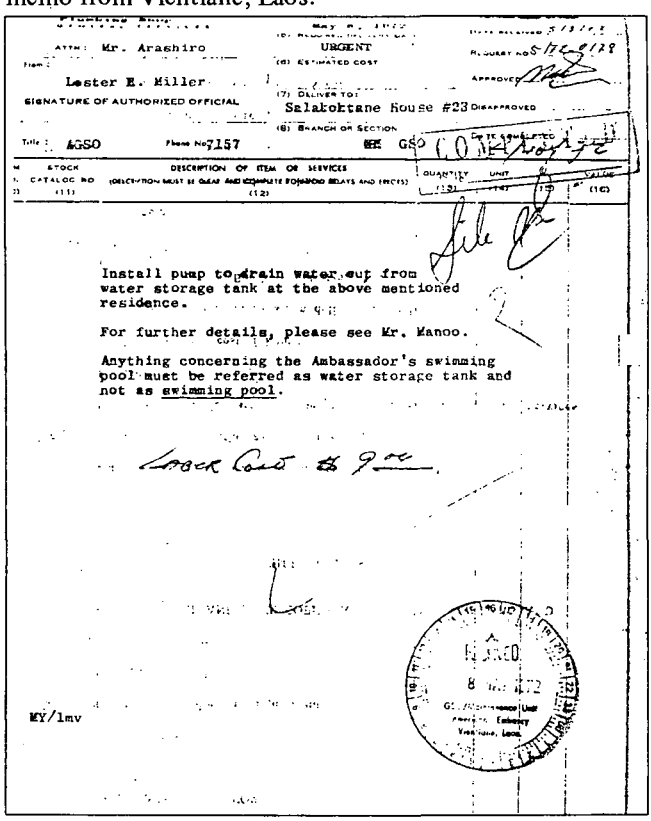
Tidbits and Outrages

Presidential Examples, Part I

If you read about the Camp David swimming pool in last month's Tidbits and Outrages, you'll be pleased to know that the President's inspirational leadership is making itself felt in the Foreign Service. A friend of ours sent us this memo from Vientiane, Laos:



ATTN: Mr. Arashiro

URGENT

Lester E. Miller

SIGNATURE OF AUTHORIZED OFFICIAL

Salakoktane House #23

Title: AGSO

Phone No. 7157

GSO

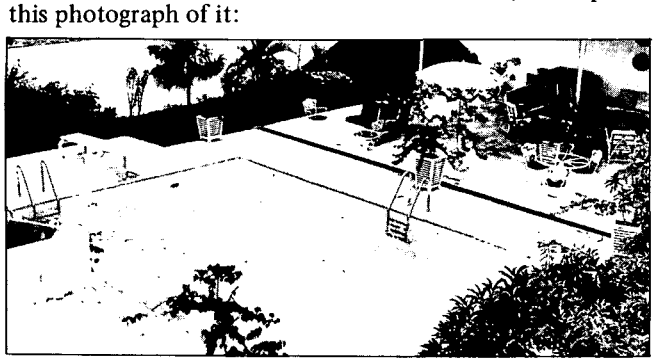
Install pump to drain water out from water storage tank at the above mentioned residence.

For further details, please see Mr. Manoo.

Anything concerning the Ambassador's swimming pool must be referred as water storage tank and not as swimming pool.

MY/lmv

Curious as to what the water tank looked like, we acquired this photograph of it:



Presidential Examples, Part II

For the last three years most of us who pay taxes have paid the government more than our President has. Russell Baker has suggested that on April 15 we get our revenge. Dig up your old laundry slips, love letters, junk mail, and other items that constitute your "personal papers." Baker's, for example, include "a complete set of third grade spelling test papers, a fifth grade report on the beaver written in longhand, and several hundred pounds of documents capable of occupying scholars for years. A typical document contains the handwritten notes and computations about the price of seventeen bundles of cedar shingles in the year 1969." Then donate the collection to the National Archives and pay Internal Revenue the official Nixon rate of 70 cents on each hundred dollars of income.

Jack Anderson's Dirty Little Secret

Although investigative reporters have now been elevated to the pantheon of national celebrities, we still harbor a few nagging doubts about the ethics of the profession. For example, according to Mary Anne Dolan in The Washington *Star-News*, Jack Anderson told a recent Washington gathering that for some years he had a standing arrangement with J. Edgar Hoover whereby he agreed to write only "nice things" about the FBI Director in exchange for access to the Bureau's files.

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Presidential Examples, Part III

By offering to let the Joint Committee on Taxation decide on his income tax case, President Nixon has gotten the kind of deal the rest of us would like to have. The President says he'll pay extra if the committee finds he *should* pay. When the ordinary man has a dispute with the IRS, he must pay unless he proves he *should not*. So if your deduction for your laundry slips and love letters is disallowed, just call Wilbur Mills and arrange a hearing.

Moral Passion

Readers who have shared our concern with what Watergate has revealed about the state of morality in the legal profession will be relieved to see by the notice below that the University of Michigan Law School has dedicated itself to an all-out attack on the problem:

ETHICS LECTURES

Judge Horace Gilmore

Tuesday, November 13
Tuesday, November 20
Room 100
7:30 - 8:30

Some states require the Law School to certify that applicants for the bar have completed training in legal ethics. Attendance at both of these lectures will satisfy the requirement. Information on the rules for each state bar is available from Mrs. Betts in 304 Hutchins Hall.

No other ethics lectures will be offered until fall 1974.

Weak News Judgment at the *Post*

Few of us are eager to indulge in self-criticism. But the Shrinking Violet Award for 1973 should go to *The Washington Post*, which hid this story about its *Newsweek* subsidiary on page 68 of the *Post*'s December 7 edition:

Newsweek
Held Guilty
in Bias Case

If you were hoping the story was on the top half of the page, you're doomed to disappointment. It ran beneath the fold and did not mention until the last paragraph that there was any connection between *Newsweek* and *The Washington Post*. Perhaps the *Post*'s editors felt that the item would be of little interest to Washington's black majority, since it involved the biased firing of a black Washingtonian by a subsidiary of Washington's major newspaper.

If Kissinger Deserved the Nobel Peace Prize...

Each year Princeton University's Woodrow Wilson School of International and Public Service presents the "Rockefeller Public Service Awards" to career government employees who have "made major contributions to their country." There are five awards, each worth $10,000, tax-free.

One of the 1973 winners was David Newsom, Assistant Secretary of State for African Affairs. The award citation referred to Newsom as "one of the most outstanding officers in the American diplomatic service," and quoted his former boss, Secretary of State William Rogers, as calling him "a leader of men... a skilled professional, a creative innovator, a perceptive analyst, a persuasive advocate, and an indefatigable worker."

Among the feathers in Newsom's cap is his rôle as architect of American policy toward the African country of Burundi. Readers of Roger Morris' article in our November issue ("Rooting for the Other Side: Clientism in the Foreign Service"), will recall the Burundi story. When tribal warfare broke out in 1972 and members of the ruling Tutsi tribe killed some 250,000 of their Hutu countrymen, the U. S. continued its political and economic courtship of the Tutsi regime and turned a discreet blind eye to the slaughter. As Morris concluded in a report on Burundi prepared for the Carnegie Endowment for International Peace:

"All sources agree that Assistant Secretary of State David Newsom and, under him, the Country Director for African Affairs, Herman Cohen, made the crucial decisions."

Of course, Newsom's award might also reflect the fact that he was a leading light in the formation of American policy toward Biafra.

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The Ziegler Memorandum:

To: Richard Nixon

From: Ron Ziegler

Subject: Emergency Powers of the President

As we face the possibility of impeachment, it might be a good idea to review the emergency powers available to you during a crisis. Currently there are 470 different statutes defining your powers in time of war, national emergency, or such ambiguous situations as "when hostile action by a foreign power is imminent." Taken together these special powers represent a strategic reserve that may see us through the current crisis.

To use these special powers, you don't have to declare an emergency. As you may recall, you already did that twice during your First Term. The first time was when you called out the Ready Reserve to deliver the mail during the postal strike in 1970. You also declared one in 1971 to justify the 10-percent surcharge on imports that accompanied wage-and-price controls as Phase One of your economic policy. In addition, when you took office, you inherited two still unrepealed national emergencies—one declared by Roosevelt in 1933 as a rationale for the bank holiday, the other invoked by Truman in 1950 for the Korean War.

To give you some idea of the powers available under these statutes, take a look at Section 1383 of Title 18 of the U. S. Code. The way I read this, it entitles you to do almost anything. And to do it legally. The relevant part reads like this: "Who remains in, leaves or commits any act in any military area or military zone prescribed under the authority of an Executive order of the President. . . shall. . . be fined not more than $5,000 or imprisoned not more than a year, or both." As near as I can tell—and I have been doing some checking around on this—nowhere is there a definition of "military zone" or under what conditions one might be set up. It seems that all you have to do is issue a proclamation.

This statute obviously goes well beyond the simple power to declare martial law. Remember the fanfare two years ago when the liberals in

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A Five-Point Plan to Prevent Impeachment

This memorandum was prepared for Mr. Ziegler by Walter Shapiro, an editor of The Washington Monthly. *The memo is fictitious, but the statutes it mentions are real.*

Congress did away with the clause that allowed you to set up detention camps during national emergencies? This law seems to permit you to do almost the same thing. For example, you could declare Cambridge, Massachusetts, a "military zone" and forbid any of those Harvard professors from leaving. If a "military zone" could be as small as a single building, this would make it virtually identical to house arrest. And if demonstrations are threatened, you could declare the whole Washington metropolitan area a "military zone" and refuse to let them enter.

Equally vague and open-ended are your powers to put down insurrections. Take Section 332 of Title 10 of the U. S. Code, which states:

> Whenever the President considers that unlawful obstructions, combinations, or assemblages. . . make it impracticable to enforce the laws of the United States in any State. . . by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State and use such armed forces. . . to suppress the rebellion.

Legislation like this could have been used to justify the mass arrests that were needed to thwart the 1971 "May Day" anti-war demonstrations. The protesters blocking traffic were clearly creating "unlawful obstructions," and their sheer numbers clogged the arresting machinery so much that it made "it impracticable to enforce the laws of the United States."

Obviously, we don't want to go this far now. But there are other emergency powers that may be of considerable assistance in easing our current difficulties. For example, I have sketched out below five problems that could be alleviated by the prudent use of these powers. Of course, we will take some heat from the liberal press. But I think our position is relatively solid. We can argue that these powers were approved by Democratic Congresses to deal with national emergencies.

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Impeachment of a President is perhaps the most divisive thing that could happen to this country, short of civil war. Therefore, it seems apparent that this is a reasonable time to invoke these Presidential powers.

The Destruction of Ambiguous Records

We have discussed the possibility of destroying unsubpoenaed material relating to the Watergate matter, the ITT matter, the Milk Fund, the Agnew resignation, the Ellsberg break-in, the Rebozo matter, and the Hughes campaign contribution. Much of this material is confusing and could easily be misinterpreted by our adversaries. However, up to now it has been impossible to establish a legal justification for discarding these potentially misleading documents.

This no longer seems to be a problem. The ambiguous material should be immediately placed aboard the Presidential yacht which should then proceed a few miles outside of our territorial waters. Once anchored there, any staff member armed with a letter of authorization from you could feed these documents into a shredder. Of course, once the job is completed, the authorization letter could also be placed in the shredder.

The legal basis for all this is a statute apparently designed to cover such contingencies as the seizure of the *Pueblo* by the North Koreans. Section 3311 of Title 44 of the U. S. Code reads like this:

> During a state of war between the United States and another nation, or when hostile action by an enemy power appears imminent, the head of an agency of the United States Government may authorize the destruction of records in his legal custody situationed in a military or naval establishment, ship or other depository outside the territorial limits of the continental United States. . . .

Even if we don't re-enter Cambodia under the 90-day escape clause in the War Powers Bill, the statute covers our current situation anyway. The Arab oil boycott apparently could qualify as "hostile action by an enemy power."

It appears unlikely that the press will get hold of this story, since to the best of our knowledge the existence of these papers is unknown outside the White House. If, however, the story should come out, Jerry Warren should acknowledge the elimination of the ambiguous records, but emphasize that a summary of the documents involved would be presented to the head of the General Services Administration within six months, as required under law.

Reassembling a Working Majority in Congress

We may no longer have the votes to prevent the House from beginning impeachment proceedings. And we should not underestimate our difficulties in fighting a conviction in the Senate. Moreover, Bill Timmons tells us that our standard lobbying techniques (federal projects and White House dinner invitations) will probably pay few dividends on a subject like impeachment.

Although under our Constitutional set-up there is no way we can prevent the House from voting impeachment or the Senate from holding the trial, your emergency powers do allow us considerable room to maneuver. The key fact here is that 27 Senators and 78 Representatives are also members of the Reserves. Your power over them is not diminished by the fact that less than one-quarter of these Congressional Reservists are on active or stand-by duty.

In a national emergency not only are you allowed to call up the Ready Reserve and the Standby Reserve, but under Section 675 of Title 10 of the U. S. Code, "A member in the Retired Reserve may, if qualified, be ordered to active duty without his consent. . . ." Since the Constitution makes it clear that a member of Congress cannot hold a job in the Executive Branch without resigning his seat, this clause may enable you to remove some of your adversaries from

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Congress.

The Senators certain to vote for your conviction who would be affected by this call-up are Brooke, Cannon, Church, Hart, Hartke, Inouye, Javits, McIntyre, Magnuson, Mathias, Moss, Pell, and Williams. The Reservists in the House include 22 Northern Democrats and Pete McCloskey. Since retirees are not attached to a particular unit, it should be possible to call up these liberals without affecting the position of Senate supporters like Dole, Dominick, Fong, Goldwater, and Gurney, who are also retired Reservists. (This maneuver may, however, be more help in the House than in the Senate, since Governors can fill Senatorial vacancies, but empty House seats must await special elections.)

Obviously this move will inspire some criticism on Capitol Hill and in the press. Jerry Warren should take the line that these men have been called up to help the Army cope with the fuel crisis without diverting too much energy from the civilian sector. Warren should also stress that each of these men accepted the risk of activation when he decided to remain in the Reserves. Since some of these Reservists were being paid or receiving pensions from the Pentagon on top of their Congressional salaries, it seems only fair that they should accept the hazards, as well as the benefits of Reserve duty.

Curtailing Lobbying for Impeachment

Bill Timmons reports that groups like AFL-CIO, UAW, Common Cause, and the ACLU are being particularly effective on Capitol Hill in lobbying for impeachment. Although there is no Constitutional way to forbid them to operate, your emergency powers may give us a lever to curtail their operations and divert their energies elsewhere.

All these groups are operating out of Washington headquarters. Under Section 4780 of Title 10 of the U. S. Code, "In time of war or when war is imminent, the Secretary of the Army may. . . for purposes of the Department of the Army, requisition the use and take possession of any building or space in any building. . . in the District of Columbia, other than—1) a dwelling house occupied by such; 2) a building occupied by any other agency of the United States. . . ."

This statute opens up all sorts of possibilities. For example, in a predawn maneuver, Army units could occupy the Washington headquarters of these groups. Without unnecessary vandalism, the files and other office materials could be moved into the hallway or lobby. Of course, certain files relating to impeachment might become lost in transit. The next morning office workers arriving in the lobby of the AFL-CIO's new headquarters could be greeted by a grimy Army motor pool disassembling a pair of jeeps. (Although the media is covered by another proposal, it occurs to me that *The Washington Post*'s lavish new offices would make an ideal site for an officers' club.)

Obviously, after a few evictions, these groups will relocate in either Maryland or Northern Virginia—areas not covered by the above statute. Our goal is not to put them out of business, but to hamstring their operations so much that their major emphasis is on re-establishing their filing systems, rather than impeachment. In fact, news coverage of the opening of their new headquarters in the Washington suburbs should underline to the public that we have no intention of repressing dissent.

Until we see what kind of reaction develops over this operation, the White House should say nothing. If questioned, Jerry Warren can refuse to comment on the grounds that "this is an internal Army matter." The following day we should make public a letter to Bo Calloway, urging him "to provide just compensation to those forced to relocate as required under law." Meanwhile, perhaps Jerry Ford could begin to attack the activities of these special interest groups with lines like, "I personally see no difference

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between their lobbying for impeachment and my trying to convince jurors in a murder trial to vote for conviction."

A Plunging Stock Market

Wall Street is in bad enough shape with the energy crisis. If the market continues to plunge while Congress is considering impeachment, it could really add to the climate of hysteria in the country. We cannot afford to have Walter Cronkite saying every night. "The Dow Jones was off 32.17 today as the wave of panic selling continued for the fifth day in a row. Analysts attribute one of the worst declines in history to new revelations in the Nixon impeachment trial." To put it bluntly—each point the market drops is another vote for impeachment.

Using the same provision of the Trading With the Enemy Act that Roosevelt used to declare a bank holiday, you can close the stock exchange for the duration of the impeachment proceedings. The relevant statute reads as follows: "During the time of war or any other period of national emergency declared by the President, the President may, through any agency that he may designate. . . prohibit any acquisition, holding, use, transfer, withdrawal. . . with respect to. . . any property in which any foreign country or national has any interest." Since it is a well-known fact (figures can be supplied by the SEC) that foreign investors own substantial blocs of stock in American corporations, this should be sufficient justification for the suspension of trading.

This move will not make New York's financial community very happy, but we never had their wholehearted support anyway. There may be a certain "populist" flavor to this move that may help revive our flagging support among urban ethnics. Perhaps you can make a television address to announce this action and include lines like, "Do we want Wall Street speculators getting rich during one of our gravest national crises in the last century?" Such a speech would also enable you to claim that

The Washington Monthly's

annual

Political Book Award

Each year **The Washington Monthly** recognizes the best book on politics and government published during the previous year.

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you were closing the stock exchanges primarily "to protect the small investor whose entire portfolio could be wiped out in a market plunge triggered by the unwise and intemperate actions of Congress."

The Hostility of the Media

Our goal must be to do what we can to dictate the tone of the country while Congress considers impeachment. The only way for us to prevail is if the deliberations are conducted in an atmosphere of stately calm. There should be no shrill newscasts nightly, no mobs in the street. Rather, the deliberations should reflect the solemnity of the proceeding to determine the fate of the Leader of the Free World.

Our aim in taking action against the media at this time would be to try to minimize their coverage of the impeachment proceedings. Limited coverage should dampen public hysteria and thereby lessen the political pressures on Congress to vote impeachment. We should justify our efforts by continually likening impeachment to a judicial proceeding. We should stress that the House is analogous to a grand jury and that we deplore all "leaks" by grand juries. With the Senate we should emphasize the right to a fair trial and emphasize that a number of European democracies forbid press coverage of judicial proceedings.

Three different emergency statutes give us the power to take effective action against the media. Our goal should be voluntary compliance and self-censorship, rather than governmental action against all television stations, wire services and newspapers. What I propose are ways to take effective action against our three leading adversaries—CBS, *The Washington Post* and *The New York Times*—and thereby spark voluntary compliance by the rest of the media.

Television: Section 606(c) of Title 47 of the U. S. Code states that "upon proclamation by the President that there exists. . . national emergency. . . the President. . . may suspend. . . the rules and regulations applicable to any or all stations. . . capable of emitting electromagnetic radiations within the jurisdiction of the United States. . . " Armed with this clause, all you have to do is announce that you are suspending the licenses of the five television stations owned by CBS, the *Post-Newsweek* stations and radio station WQXR, owned by *The New York Times*.

Wire Services: Section 606(d) states, "Upon proclamation by the President that there exists a state or threat of war involving the United States, the President. . . may cause the closing of any facility or station for wire communication. . . ." Here our goal is to dismantle the wire services operated by the *Post* (along with the *Los Angeles Times*) and the one run by *The New York Times*. These wires are important because they supply a large portion of the national news in such hostile papers as *The Boston Globe* and *The St. Louis Post-Dispatch*.

Newspapers: Obviously, under the First Amendment, we cannot close down any papers. But we do seem to have the power to limit the newsprint available to papers like the *Post* and the *Times*. Under Section 2664 of Title 10 of the U. S. Code, the Secretary of Commerce "in time of war or when war is imminent" has the power to acquire all facilities related to timber production. That should do the trick.

Final Note

The above five recommendations should enable us to finally take the initiative against our adversaries in the Congress and the press. My list of recommended actions under your emergency powers is by no means complete. I am, for example, currently searching for a law under which we could cut off mail service to Congressional offices and thereby lessen the political pressures about impeachment. But the above material seems enough for now. ■

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Memo of the Month

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SUBJECT: FEPCA v. FIFRA

FROM: Deputy Assistant Administrator for Pesticide Programs

TO: All Environmental Protection Agency Employees

Due to the uncertainty which exists as to the name of the current law governing pesticide regulation, and to the currency of the acronym FEPCA, the Office of Pesticide Programs issues the following statement as definitive.

The Federal Environmental Pesticide Control Act, or FEPCA, was a legislative mechanism used to amend the 1947 FIFRA. The law under which pesticides are regulated by the Federal Government is correctly known as the Federal Insecticide, Fungicide and Rodenticide Act. When the effective dates contained in Sec. 4 of PL 92-516 have passed, FEPCA will pass out of existence, leaving only "FIFRA as amended," or "FIFRA of 1972."

The Office of Pesticide Programs realizes that many individuals, including some representatives of the Environmental Protection Agency, have mistakenly used "FEPCA" where "FIFRA as amended" was intended. It is our hope that this statement will clarify the situation, and lead to a uniform usage.

Henry J. Korp

Henry J. Korp

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Conning Congress-The Wild Card Story

by Eliza Paul

THE HIGHEST BANK INTEREST IN THE WEST! 8% ON TIME DEPOSITS! FOUR YEAR CERTIFICATES OF DEPOSIT–$1,000 MINIMUM. LIMITED OFFER.

KEEP INFLATION AWAY FROM YOUR SAVINGS! EARN 8.4% INTEREST!

IF YOU'RE NOT EARNING 8½% ON YOUR SAVINGS, CLIP THIS COUPON!

9% NOW!

IF YOU LIKED 9%, YOU'LL LOVE 9¼%!

9½% ON CERTIFICATES OF DEPOSIT!

It was too good to believe. There you were, just an average guy with a few thousand dollars in your savings account, and suddenly the big banks wanted you. Yes, you! Not just banks, but savings and loan associations as well, and they wanted you so badly they were willing to pay 8-percent, 9-percent, even 10-percent interest for the privilege of keeping your money for four years. For the first time since the minimum denomination for U.S. Treasury bills was raised tenfold (from $1,000 to $10,000) in 1970, you could earn top market rates for your savings, just like the fat cats who put their money in "jumbo" certificates of deposit and Treasury bills.

Why should you settle for 5-percent interest on a savings passbook when everybody else is making a fast buck? Maybe the inflation was eating into the family food budget, but at least you could earn your fair share in an interest-rate war as banks vied with savings and loans for your savings dollars.

This was the big time. No more

Eliza Paul is a former financial reporter with the Reuter Washington bureau.

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sets of Melmac dinnerware for opening a passbook account; no more two-bit competition between the bank that offered 4¾ per cent and the savings and loan paying 5 per cent last summer; the battling financial institutions were offering you a chance at the kind of interest big investors are used to, and your chance took the form of "wild cards," special four-year certificates of deposit available in sizes you could afford. The wild-card experiment began in July, 1973, when the government took the ceiling off interest rates that banks and S&Ls could pay the $1,000 accounts. Market forces would be the only restraint on how high the interest would go. Before the bubble burst, interest rates soared as high as 10 per cent.

In October, Congress, responding to a massive lobbying campaign by the savings and loan industry, legislated the average man right out of the competitive money market. Effective November 1, a 7½-percent ceiling was clamped on the wild cards. (Savers who bought one of the wild-card certificates during the four-month honeymoon period were unaffected by the new limit.)

The blow dealt the wild cards should not be confused with the way the average depositor gets "nickel-and-dimed to death" at his local bank. Hustles like the 360-day year on loans generally mean pennies to the small borrower, but multiplied by the number of bank customers often mean millions for financial institutions. But wild cards were different and the amount that this hasty congressional move cost the average saver could be substantial.

Before they stacked the deck against wild cards, if you had $5,000 to invest—and assuming that interest rates averaged 9 per cent over the life of the certificate—you could earn more than $1,800 in interest (how much more would vary since there are over 100 different ways to compound interest) by just letting your money sit in a bank or savings and loan for four years. But with the 7½-percent ceiling, you would earn a bit more than $1,500 over the same period of time. That $300 differential is about enough to treat yourself to a new color television set.

You lost your chance to see "Hollywood Squares" in living color because your friendly savings and loan, aided by sympathetic congressional liberals, wanted you to be able to buy a new home. The S&L which most families go to for their mortgages suckered a confused Congress into believing that the wild cards were siphoning money away from their mortgage funds and forcing them to turn potential home-buyers away.

Congress traditionally has been sympathetic to the needs of the savings and loan industry, which provides 75 per cent of the nation's home mortgage money. Unlike banks, which can obtain capital in a variety of ways, the S&Ls must rely almost entirely on savings deposits. To attract these deposits, S&Ls have paid higher interest rates than commercial banks. Yet in the mid-sixties, commercial banks began raising their rates to attract the small saver. To protect the savings and loans, interest rate ceilings were set in 1966 which allowed the S&Ls to pay higher rates. The wild cards meant that, for the first time since 1966, commercial banks could pay the same interest rates as savings and loans. Despite its free enterprise rhetoric, the savings and loan industry looked on this kind of direct competition as an anathema. But in appealing to Congress, the S&Ls argued instead that the wild cards would divert money from S&Ls to the big commercial banks who could better afford to pay the new high interest rates. If savings and loans deposits dropped as a result, this would mean that less money would be available for mortgage loans.

The fear of further evaporating the already tight mortgage market was enough to convince Congress to pluck the wild cards out of the deck without bothering to hold hearings or consult the savers who might be affected. While it seems to take years for

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Congress to pass campaign-spending legislation, the anti-wild card bill zipped through the House and Senate in two days, passing both Houses by voice votes that left the small saver with no way of determining exactly who was responsible for yanking him out of the competitive money market. And next fall, congressional incumbents will point to this bill and claim they have done something to ease the housing crunch.

They haven't. And if hearings had been held, or if anyone had bothered to give the S&Ls' claims a serious examination, this fallacy would have been readily apparent. But a kind of hysteria sets in on Capitol Hill when constituents begin to complain that they can't get mortgage credit and when letters and phone calls start pouring in from the presidents of local savings and loans. There just wasn't time for hearings; not a day could could be lost in pulling the S&Ls out of their latest crisis.

The bill was largely the work of two of Capitol Hill's most conspicuous crusaders for the rights of the little man, Senator Hubert Humphrey and Rep. Wright Patman. Humphrey is the old-time liberal's liberal, and Patman, chairman of the House Banking and Currency Committee, has spent most of his long years in Congress battling the big banks.

The Anti Wild-Card Troops

Worried by the tight mortgage market, Humphrey eagerly bought the S&Ls' story and introduced the bill which was the springboard for the anti-wild card legislation. Patman could have stopped the legislation in committee, but instead, under pressure from the House leadership and his own committee, introduced the bill himself. When the smoke cleared, Humphrey and Patman's reputations were spotless, the small saver couldn't earn as much for his money, and the average man was still having trouble getting a mortgage.

The legislative coup that destroyed the wild cards was pulled off by the industry's lobby, the U. S. Savings and Loan League. The League, operating with a small Washington staff, is a blanket organization including almost all of the nation's 5,200 savings and loan associations. Working through a network of state organizations, the League can, if necessary, generate thousands of letters to Congress in a day's time. Its chief lobbyist on the wild card legislation was Glen Troop. Troop is not a "corridor man," rarely seen pacing the halls of Congress during executive committee sessions or sitting in on committee hearings. Instead, he works prodigiously behind the scenes, wining and dining appropriate staff and committee members, making friends, and keeping up contacts. The League doesn't ask much of Congress; but when it does, legislators are only too happy to oblige. Glen Troop is not the kind of man a politician can say "no" to during a mortgage crunch.

Troop made a simple pitch to Congress—wild cards were drawing funds out of S&Ls and into commercial banks and this, in turn, was drying up the mortgage market. It was an appealing argument explaining an arcane financial process in terms that a congressman could easily understand—and politically appreciate. There was one problem—it just wasn't true.

Crucial to Troop's argument was the contention that S&Ls couldn't afford to pay the new wild card interest rates. Yet writing home mortgages is far from an unprofitable business—in 1972 the total net income of the nation's 4,100 federally insured S&Ls was a hefty $1.7 billion. In effect, Troop was asking the small saver to help subsidize his local S&L, whose net profit was probably more than $400,000, by accepting lower interest rates.

Moreover, the evidence suggests that the big banks weren't outhustling the S&Ls in going after wild card savers. Instead, the savings and loans seem to have been doing most of

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the promoting of the consumer-sized certificates. According to the American Bankers Association (admittedly, a less than disinterested group), S&Ls placed three-quarters of the razzle-dazzle advertising touting these new high interest rates. And the ABA's survey of banking's 50 major markets also concluded that savings and loans weren't skimping with the interest they paid on the wild cards either—figures cited in the advertisements ranged from 8 to 10 per cent.

The only evidence that Troop presented to prove that wild cards were hurting the S&Ls and thereby affecting the housing market was a decline in savings and loan deposits during the months of July and August. Troop implied that this money had gone from the S&Ls to those commercial banks that were paying higher interest on the wild cards.

Of course, there is no way of telling what a saver does with his money when he makes a withdrawal from his local savings and loan. But indications are that this outflow from the S&Ls did not go to the commercial banks. In all likelihood, this money was invested in $10,000 Treasury notes or used to pay personal bills.

Moreover, later figures totally demolish Troop's argument. October was the heaviest month for the purchase of wild cards as smart savers rushed to beat the November 1 cutoff. Yet, during this month more money flowed *into* the savings and loans rather than out of them. It should have been apparent that wild cards had about as much impact on the mortgage market as they did on soybean futures.

Nader Fiddles, While Arthur Burns

Yet facile arguments like Troop's can be quite effective when no countervailing pressure is mobilized against them. There are literally no organizations in Washington representing the rights of the small saver. In a last-ditch effort to save wild cards, Arthur Burns dispatched one of his fellow members on "the Fed" to try to convince Ralph Nader to enter the fray on the side of the small depositor. Nader declined because he was tied up with other causes and currently had no one on his staff working on financial matters. None of the other Washington consumer lobbies has shown any inclination in this direction either, since they apparently feel that the public cares more about flammable fabrics than about being chiseled by the savings and loans.

Only the American Bankers Association has the kind of political power that could have saved the wild cards, but interest rate wars don't sit well with them either. While the ABA's leadership officially supported the consumer certificates of deposit, smaller banks, which make up the bulk of the organization, were griping as loudly as the S&Ls about how they couldn't afford to pay the new higher interest rates. So, the ABA staff ducked the issue entirely by being conveniently out of town when the wild card legislation was bulldozed through Congress.

The ABA's reluctance to get involved was not surprising. The interest rate ceilings are geared to protect banks and savings and loans from the perils of competition and the two groups don't slug it out very often over issues. Instead, regulatory legislation is generally the result of a gentlemen's agreement between industry groups, moderated by sympathetic congressional banking committee members.

The moral of the story should be clear. Even this slightly simplified version of the wild card should have convinced most readers that banking is a terribly abstruse field. It's just for this reason that congressional liberals should be wary of simple cause and effect models advanced by glib banking lobbyists. It's also why we need a consumer lobby to speak for the neglected interests of the small savers and borrowers. But maybe this kind of reform just isn't in the cards. ■

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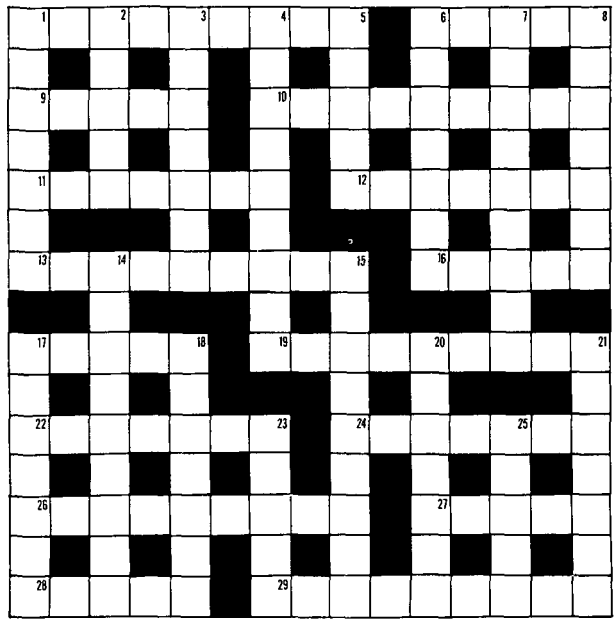
the political puzzle

by John Barclay



ACROSS

1. Newly precious liquid? Let me pour. (9)
6. There are quite a few in Basra. (5)
9. Get the whole thing at lot prices. (5)
10. Can you count a menu tree? (9)
11. The gain from this oil saving may be great. (7)
12. Punt due? All ready. (5, 2)
13. Oil devastations make Ellis gasp. (9)
16. Old or new, it belongs to him. (5)
17. Try to buy what is in coffers. (5)
19. Made as if deep trend did not exist. (9)
22. One thing which stops starers. (7)
24. Many cure-alls for only six lire. (7)
26. Fixed up, but ruined too, in a way. (6, 3)
27. Really has nothing to do. I.e., nun. (5)
28. Something to rub in piano sessions. (5)
29. Our capitol fifty-one times over. (9)

DOWN

1. Hip sect on the playing fields. (7)
2. A treat for four to start. (5)
3. Alaska pipeline measure may be high this year. (3, 4)
4. Something vital missing near Peggy. (6, 3)
5. Climb to see int'l org. in French word. (5)
6. At one it began to devour time. (3, 4)
7. Left in a bed and on it, too. (9)
8. Something noticed about rinds up. (7)
14. Fire irons placed underneath. (9)
15. Sweet deal for bunch of Nordic types? (5, 2, 2)
17. Speech clarifies proportion on around. (7)
18. Scramblers found her in Russia mixed up. (7)
20. Mine net is easy to see. (7)
21. Is it Ll. D.? Concentrate. (7)
23. Lower oneself to be seen on porch? (5)
25. Is 102 Roman? No, Greek. (5)

The numbers indicate the number of letters and words, e.g., (2, 3) means a two-letter word followed by a three-letter word. Groups of letters, e.g., USA, are treated as one word. Answers to last month's puzzle are on page 10.

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The Screwing of the Average Man-Where It All Ends

by Mary Adelaide Mendelson & David Hapgood

Life is rough for the average man. For 40 years he fights a rear-guard battle with the highwaymen of the modern world—the tax collector, the insurance salesman, the loan officer at the local bank. If the outcome of these contests is rather one-sided, at least he feels physically up to the struggle. But as he starts to slow down a little and his health begins to go, looming on the horizon is the nursing home, where more and more people are receiving their final and most ignominious screwing.

One million Americans now end their days in these institutions. It is a sad way to go, and a grim reflection of the way we treat the old among us, and for this reason these homes remain a dark place that few want to look into. Most people with relatives in nursing homes would rather think of practically anything else.

Many of us have had the experience of looking into the world of the nursing home, often with considerable guilt, because someone in the family can no longer make it on the outside. Other than word of mouth, there is little to guide us in trying to pick the rare good home out of innumerable mediocre ones and the occasional Auschwitz. Once they have chosen a home, relatives can expect, if the patient is on Medicaid, to have to bribe the operator with something extra under the table to obtain even minimal care for the patient. One of the pillars of the industry, Dr. Michael Miller of White Plains, N.Y., was charged by state auditors with requiring relatives to make donations and to pay for counseling fees. If the relatives

Mary Adelaide Mendelson's book on nursing homes, Tender Loving Greed, *will be published in March by Alfred A. Knopf. David Hapgood is a contributing editor of* The Washington Monthly.

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Margot Magee

don't like that, or if they complain about the conditions in the home, they are typically told, "If you don't like it here, take your father someplace else."

The nursing home patient is the victim of private greed and government indifference, and his presence there is yet another sign of the death of the family. That death was officially certified when the federal government decided that the children's resources should not be a factor in determining whether an aged patient is eligible for Medicaid. Parent and child alike, we're all on our own.

There once was a time when the elderly could depend on their family for care, and when the children would have decided whether or not their relatives needed to be sent to an institution. Now the average man's closest relative is often the government, and the place where he will end his life may be chosen by a caseworker whom he may never even see.

The average patient will not necessarily enter a nursing home solely because he needs "skilled nursing care." Medical investigators have estimated that between 30 and 90 per cent of people in nursing homes are healthy enough to be somewhere else. Some could get along at home, if they had a certain amount of personal assistance. The wealthy can pay for this assistance, and therefore stay out of the institution. But when the average person finds that he can no longer function completely on his own, he may have no choice but to sign on for complete institutional care. Half the people in nursing homes have no immediate family, and, of the rest, half have no relatives who take an interest in their plight.

Once inside the home, the patient is entirely dependent on the people who run it. Some of the nursing home operators merit the trust patients must necessarily place in them, but too many do not, especially those lured into the business by the flood of government money that has washed over nursing homes in the last few years.

Apart from the financial exploitation of the patients (about which more later), some nursing home operators step in to directly manipulate their patients' conduct and behavior. There have been reports of physical force used to this end, but drugs are the preferred technique. Some $200 million in Medicare funds alone goes each year for drugs in nursing homes, and 40 per cent of that is spent on tranquilizers and sedatives. Many of the other drugs get siphoned off in swindles and never reach the patients, but that 40 per cent usually hits its target. Take, for example, the California operator who zaps each incoming patient with a tranquilizer to "make him feel at home." A retired nursing home operator once described how tranquility is maintained:

> A layman doesn't know what to look for in a nursing home. He walks in and sees a patient is nice and quiet and he thinks this guy is happy. And the nurse tells him: "This is John. John is one of our best patients. He sits here and watches television."
>
> But you take a look at John's pupils and you'll see what condition John is in. John is so full of thorazine that it's coming out his ears. Thorazine—that's a tranquilizer they use. It's a brown pill. It looks like an M&M candy.
>
> The nursing home where I worked kept at least 90 per cent of the patients on thorazine all the time. They do it for the money. If they can keep John a vegetable, then they don't have to bother with him. They never have to spend anything to rehabilitate him.

Doped up, the patient is less likely to complain about what is done to him, or not done for him. If he's lucky, he will merely be neglected. When he calls for a nurse, he may find there is none on duty because this saves the nursing home operator money; he may however spot an aide wearing a nurse's cap if an inspector happens to be in the home. The government pays a doctor to treat him, but often the patient catches only a glimpse as the doctor flashes past in that Medicaid phenomenon

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known as the "gang visit"—the doctor gallops through the nursing home, glancing briefly at the most urgent cases, and then bills Medicaid for a personal call on each patient. In one case a doctor billed Medicaid for 71 patient visits on one day and 56 on another; he charged for 960 visits in a three-month period. Another doctor racked up 90 calls on one day and 86 on another, making 487 calls in 16 days. Meanwhile both of these doctors were also carrying on their usual non-Medicaid practices.

The really unlucky patient will land in a home where the patients are not only neglected but actively abused. The patient's luck has run out entirely if he finds himself in the hands of a Benjamin Cohen or a Daniel Slader. Cohen owned and operated the Kenmore Nursing Home in Chicago where, according to an undercover investigator, in 1971 he fed each of his patients on 78 cents a day. Slader, who was treasurer of the Metropolitan Chicago Nursing Home Association, was even thriftier, feeding his patients on 58 cents a day. His home was not closed down despite 50 recent violations, and an inspector's report that found the "overall picture of the third floor to be in deplorable condition. The stench permeated the area. . . broken plumbing, peeling plaster, inadequate food." Both operators were getting rich on their underfed patients. Cohen was earning two for one on his investment. He had bought the home for $40,000 cash, and in one year he had a net profit of $50,292, plus another $31,000 in depreciation (in effect, tax-free income), plus another $14,000 in salaries for his wife and himself. As for Slader, he and his associates were said to have made $185,000 in one year on their investment of $40,000. Run properly, nursing homes need not be purely a do-good operation.

The Missing Link

Even though no locked door prevents him from leaving, the patient has little chance of escaping such a concentration camp. Assuming he can still move around on that 58-cent-a-day diet, he nonetheless has little hope of getting out because the nursing home operator has a Dickensian hold on his money. His monthly social security checks are cashed by the operator, and the patient has no idea whether he could ever pry the checks loose if he left the home. Even the small monthly allowance which Medicare provides for personal expenses is likely to have been intercepted by the operator.

He could, if he is on Medicaid, call the caseworker who put him there in the first place and ask to be transferred. It's unlikely that the caseworker will be of any help, however. He knows all about that home, the stench, the lousy food, the early deaths, but he has sent old people there for years, and he will go on sending them there for any of several reasons. He may have no choice: the other homes in the area are either just as bad or else they are full. Or he may have an understanding with the operator. Caseworkers are essential to the steady flow of patients on which an operator's prosperity is based, and often the operator rewards the cooperative caseworker with, say, an expensive Christmas gift, or, as happened in one city, a bounty on new patients of $100 a head. The patient, on the other hand, can't give the caseworker anything for moving him to a better home, but even if he could, the caseworker would probably prefer to leave him there. If he takes the patient out, it means trouble with the operator and other patients asking to be moved. It just isn't worth it when the patient probably doesn't have long to live anyway.

The missing element in the patient's protection is the government. Although state and federal government foot the largest share of the nursing home bill, they have often swallowed the operators' argument that no outsiders should look too closely at the way the public money is

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being spent. Like the AMA, the operators believe in self-regulation. One enthusiastic advocate of the virtues of self-regulation was Donald W. Gormly, who in the late sixties was president of the California Nursing Home Association and treasurer of the national association. In 1971 Gormly was proved right. He and his wife and accountant were indicted on a charge of padding the bills paid by the state and federal governments for patients in one of their nursing homes; Gormly was convicted and required to give back $1.2 million.

Stennis the Menace

Government, which licenses and inspects the homes, might at least be expected to enlighten us about nursing home conditions even if it's impossible to regulate them. Government inspectors' reports are the best, in fact virtually the only, outside information about the quality of a nursing home. Strong opposition from the American Nursing Home Association lobby and pressure from inspectors themselves make it unlikely that such enlightenment will come. Government agencies, led by the Department of Health, Education and Welfare (HEW), seem determined to keep us in the dark. At this writing, HEW is engaged in a stubborn rear-guard action designed to keep its inspectors' reports from the public eye. HEW seemed to have lost a round in early 1972 when Hal Schechter, a reporter for *Hospital Practice*, won a suit granting him access to inspection reports on homes licensed for Medicare. Similar cases have been fought in state courts over Medicaid, which is administered by the states. HEW gave ground inch-by-inch. It interpreted the court order to mean only that Schechter himself could have access to the eight reports on which he based his suit, not that the general public could see Medicare reports. Later in 1972, Congress adopted legislation requiring HEW to make public both Medicare and Medicaid inspections. Still HEW hung on

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grimly, interpreting the law to mean that the public could see, not the entire report, but an "extract" from it, and that not even certified by Senator Stennis. It further ruled that the extracts could not be obtained at the nursing homes or by telephone or mail, but only from the regional Social Security office or the local welfare office. HEW succeeded, within the limits of the new law, in making it as hard as possible for a person considering a nursing home to find out what the last inspector had written about the place. Certainly it had avoided the obvious action: collecting the reports into a nursing home guide for the public, or posting the reports at the entrance to the home.

Slick Operators

Government's role as the nursing home industry's third-party friend dates mainly from 1965, when Medicaid and Medicare were moving into action. In the previous decade enough new money, both public and private, came into the nursing homes and attracted some smart pioneers, who today are among the industry's most eminent hustlers. But that was only a trickle compared to what happened after 1965, when the taxpayer joined the patient as a victim of the nursing home industry. By now, government provides some three-quarters of the industry's annual $3.5-billion revenue, and Medicaid alone supports more than half the one million people in nursing homes.

The flood of third-party government money aroused innovative greed in all sectors of the health industry, but the larger proportion of major swindles in the industry is to be found in the nursing homes. As the money poured in, more people went to nursing homes; as more people came, the industry raised its prices; and as the prices went up, fewer and fewer patients could afford to pay their own way, so that yesterday's private patient today is on Medicaid.

Nursing home swindlers belong to one of two categories: small-time, old-fashioned, and illegal; or bigger, newer and, usually, within the law.

The old-fashioned swindler is usually someone who grew up in the industry and is working with little capital. This is the kind of operator who pilfers the small amount—usually $5 to $10 a month—that patients are supposed to get out of the Medicaid check for their personal use. Another way the operator can increase his net is to cut expenses. Typically he is working against a flat-rate Medicaid payment system. He gets, say, $14 a day for each patient. He can't do anything with fixed costs such as rent and taxes. But he can cut what comes out of the patient's hide: food and service. Herbert Cook of California belongs to the small-time variety of operators. He was caught buying substandard eggs, known as "checks and dirties." But what got Cook into trouble was not that the eggs were banned for human consumption, which they were, but that he obtained them illegally.

The old-fashioned swindler on a somewhat larger scale was Eugene Woods, former operator of a home in Cleveland. Woods intercepted social security checks addressed to his patients, then endorsed and cashed them himself. It happens that the amount paid the nursing home by Medicaid is determined by subtracting the patient's social security payment from the nursing home's monthly rate, so that by intercepting the checks (the patients had no reason to care, since they wouldn't have gotten the money in any case) Woods managed to understate the amount of social security the patients were paying him and thereby collect correspondingly more from Medicaid. Woods pulled off some even more exotic hustles. Once he kidnapped an old man from a rooming house, and put him in his nursing home, where he eventually bilked him of close to $30,000. When Woods skipped town, among his papers was found a list of the items in a coin collection owned

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by a patient, with the most valuable coins marked by asterisks.

The drug store kickback is another classic ploy of the old-fashioned nursing home. A nursing home, to begin with, is the best customer a drug store could hope for. Frequently, the home will give all its business to one pharmacist. Customers who bring that kind of business are normally entitled to demand a discount. But the nursing home operator doesn't openly ask for a discount, which would be passed along to the taxpayers who ultimately pay the bill. Instead, he extracts a kickback, the taxpayer pays the full bill, and operator and pharmacist split the difference.

At times these old-fashioned hustles reach a volume that can no longer be called small. Yet they retain enough of the two-bit-hustler flavor and are clear enough in their illegality to be considered disreputable. The great contribution of the new breed of nursing home operators, those who came in during the 1960s, was to rise above these tawdry origins and make swindling respectable. The new operators come from establishment backgrounds—many are lawyers or business school graduates—and they understand the modern world far better than the small-timers ever did. They saw that the nursing home plus government money offered a springboard for large-scale financial hustles that had the virtue of being legal—most of the time, anyway. In their eagerness a few of the new breed crossed the line, and a couple have even been caught. But in general their swindles are both far bigger and far safer than the nickel-and-diming of the small-timers (who are still in business also).

The newcomers excel in the cost-plus situation. Medicare, and in some states Medicaid as well, pays nursing homes their costs plus a reasonable profit. The new operators quickly devised ways to pad costs and make their profits unreasonable. They build or buy a nursing home and then lease it to themselves at an outlandish rental, which then becomes a "cost" reimbursable by the government. Or they set up separate corporations to sell goods and services at unreasonable prices to their own nursing homes.

Two officers of the nursing home chain bearing the strange name of Convalariums of America were among those who pushed this game a bit too far before they got caught. They set up six dummy corporations which rendered phony invoices to Convalariums at inflated prices. Convalariums paid these invoices, the dummy corporations paid the actual suppliers, and the two executives pocketed the difference.

Business as Usur-al

Some business leaders realized that the nursing home, with its guaranteed government revenue, provided an excellent base for usury. Moneylenders load the homes with mortgages—the interest will be paid by the government—and use the resulting capital for other enterprises. One Joseph Kosow of Boston, for example, has grown rich by placing second and third mortgages on nursing homes at rates of interest running up to 40 per cent a year. In some homes that do business with Kosow, mortgage payments have eaten up one quarter of their revenue. The government is not alone in lamenting the operators' unrestrained passion for the third mortgage and the high interest rate. Often the patients suffer as well, when the interest payments rise so high that "fat" must be cut from the rest of the home's budget. In one such case, rent and mortgage payments consumed almost a third of the budget, consequently the payroll was pared to a fraction of its level in normal homes. Who suffered? The patients, who got less care. The patients were paying off the moneylender.

The taxpayer, the patient—all in all not a bad list of victims for an industry supposedly devoted to providing loving care. But the more imaginative of the operators saw that the list was not complete. Millions of

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investors were ready, out there in the heartland. If they were not exactly eager to be fleeced, they were at least willing to put their money into the nursing home industry when it incorporated and went on the market. Every good con man knows that greed is the downfall, and the lure of big money drew hordes of small investors into the industry in the late sixties.

In 1969, the brightest of these stars were known as the "fevered fifty" of Wall Street, and J. Richard Elliott, Jr. of *Barron's* wrote that a ". . . kind of frenzy seems to grip the stock market at the merest mention of those magic words 'convalescent care,' 'extended care,' 'continued care.' All euphemisms for the services provided by nursing homes, they stand for the hottest investment around today." There was, said one analyst, "no way" to lose money in this business. What the average man as investor failed to see was that, while there was no way for the promoters to lose, there was ample opportunity for the investor to lose his shirt: he thought he was being invited to get in on the take, but the fine print said it was an invitation to a screwing—his own. When the national recession and a host of other factors made the boom burn itself out by 1971, the average investor found that the stock he bought when it was headed for the moon was now permanently attached to the ground.

Unseasonable Weather

None did worse than those caught with shares in Four Seasons Nursing Centers of America. First offered at $11 a share, it shot up to a peak of $181.50, then shot down just as fast, and was worth 50 cents a share when trading was suspended. The chain went bankrupt. In 1972 eight officers of Four Seasons, its accountants (Arthur Andersen and Co.), and a brokerage firm (Walston and Co.) were indicted on charges of defrauding the investors. According to the charges, the officers showed the public phony figures about Four Seasons' performance in order to run up the price of the stock. The company's accountants obligingly certified the figures. Then, when the stock began to fade, the officers bailed out by selling their own shares through secret accounts at the brokerage house. That left the average investor holding an empty bag. The loss to the stockholders of $200 million was said to be a record for a stock-fraud indictment—a remarkable tribute to the ability of the new breed of nursing home operators, for after all they were in an industry that had not even been on Wall Street a few years earlier. Old Daniel Drew, the inventor of watered stock, must have smiled down appreciatively from hustlers' heaven.

Of course, the Four Seasons operators got caught, which is bad form, but the size of the fraud guaranteed them against substantial retribution. This became evident when the former president of Four Seasons, Jack L. Clark of Oklahoma, came up for sentencing. Clark was said to have made $10 million as his share of the hustle. The judge (Thomas P. Griesa) sentenced him to one year, meaning parole in four months, and imposed no fine at all. If Clark can be considered to be earning his swindle with his jail time, he is getting paid at the rate of $2.5 million a month. Most of us would be willing to put in a little time in jail at that salary. As for the investor, he could reflect that Clark was putting in one month for each $50 million that the stockholders lost on Four Seasons.

The record of the nursing home industry is the best argument for the revival of a sense of community that would make it intolerable for us to allow the old to live their last years in the cold hands of an indifferent bureaucracy. Until that day comes, the average man seems doomed to paying out extra taxes to support the industry's hustles and excess profits, while heeding, if he can, this advice: don't get caught alive in a nursing home. ■

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political book notes

Public affairs books to be published this month.

The Americanization of Dixie. John Egerton. Harper's Magazine Press. A good idea—detailing the homogenization of the South—uninspiringly executed. It is indicative of Egerton's disembodied, armchair tone that the most vivid chapter is an account of an academic conference on the New South. The book seems to be an amalgam of all of Egerton's magazine articles that touch tangentially on his announced—but never developed—theme.

Black Children, White Dreams. Thomas J. Cottle. Houghton Mifflin, $5.95.

Blacks in America's Wars. Robert W. W. Mullen. Monad, $5.00/$1.45.

A Compulsive Spy. Tad Szulc. Viking. This is strictly the early draft for a more detailed and original study of E. Howard Hunt, the spy, spy-author, and plumber. Much of the CIA story, though in this account by a *New York Times* reporter it continues to be entertaining, is all too familiar, and the details here about Mr. Hunt are hand-me-down. It's too bad Szulc couldn't get first-hand information from his subject. The material suggests the possibility of a fresh, ironic, and insightful biography.

Consequences of Failure. William R. Corson. Norton, $7.95. This is the author's attempt to grasp "the pattern and inner meaning of the phenomenon of military failure and its present and future efforts in the United States, its institutions, and its people." He has bitten off more than he can chew. There is, nevertheless, much that is interesting in his analysis, particularly when he brings his experience as a Marine officer to bear on analyzing the effect of Vietnam on the military establishment.

Charlie Simpson's Apocalypse. Joe Eszterhas. Random House, $5.95. It's surprising in a way that the "necks" in Harrisonville, Missouri, didn't start hassling the town hippies sooner. The kids hung around noisily in the claustrophoic town square making out on drugs and making an eyesore of themselves to provoke the wrath of their bigoted elders, if this book is to be believed. Then a hippie farm boy went berserk one day and shot three people dead with his M-1 and then killed himself. This book recounts the episode, and what led to it, and then how the townfolk went after the hippies and one black youth whom they found particularly unbearable, perhaps because he liked to lie around with white girls in full public view. Eszterhas must depend on his own good will for the reader's sympathy because this is a pretty dull-witted story all around.

Ernest W. Burgess on Community, Family, and Delinquency. Leonard S. Cottrell, Jr., James F. Short, Jr., Albert Hunter. Univ. of Chicago, $13.50.

Coping: On the Practice of Government. Daniel P. Moynihan. Random House, $10. All the essays collected here have appeared before, but this finally works to Moynihan's advantage by showing how well his views have held up over time. The distinction of his approach is his refusal to ignore the complications and realities of problems ranging from automotive safety to welfare reform. Some confuse this approach with conservatism, but in fact it is the only way to make liberal policies succeed.

Court and Constitution in the Twentieth Century: The Modern Interpretation. William F. Swindler. Bobbs-Merrill, $12.95.

The Department of Health, Education and Welfare. Rufus E. Miles, Jr. Praeger, $9.

The Discarded Army: Veterans After Vietnam. Paul Starr. Charterhouse, $6.95/$4.95. An adapted excerpt appeared in the November issue of *The Washington Monthly.*

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The Distribution of Air Quality in the New York Region. Jeffrey M. Zupan. Johns Hopkins, $3.

Earthwalk. Philip Slater. Doubleday, $7.95.

The End of Intelligent Writing: Literary Politics in America. Richard Kostelanetz. Sheed and Ward, $10. Discussed by Suzannah Lessard in "Moral Myopia: *The New York Review* and the New York Intellectuals" in the November issue of *The Washington Monthly*.

The End of the War in Europe: April 15-May 23, 1945. Charles Whiting. Stein & Day, $8.95. Sometimes an old-fashioned World War II book makes delightful reading. What a relief to fill our minds with the guiltless stunts of Monty and Ike and old "Blood and Guts." It's like reading a 19th-century novel. This one is about the very last days of the Allied offensive in Europe. Whiting's battles are exciting and he seems to write about them exactly and with schoolboy affection. About the larger conflict between Eisenhower and Bradley on the one hand and Montgomery and Churchill on the other over whether or not to go for Berlin before the Russians got there, Whiting gives us the conventional version.

Environmental Issues: Population, Pollution, and Economics. Lawrence G. Hines. Norton, $9.75.

REPORTERS and OFFICIALS

The Organization and Politics of Newsmaking

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At a time when the biggest thing in the news is the news media themselves, this book looks inside two of the biggest newsmaking institutions in the country, *The New York Times* and *The Washington Post*. **Reporters and Officials** examines the structure of these two mammoth, influential, and bureaucratic organizations and details how the news gets made within them, as well as the phenomenon of the newsman as political "confidant"—the image-enhancer and shaper of public of opinion. $11.50 Hardcover

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Four Reforms—A Guide for the Seventies. William F. Buckley, Jr. Putnam, $4.95. Buckley's program for the seventies includes repeal of the Fifth Amendment, alteration of the First Amendment to permit state aid to parochial schools, elimination of tax exemptions along with adoption of a uniform tax of 15 per cent, and the limitation of federal welfare payments to states whose per capita income is below the national average. The author's sympathy for the poor is as always well under control. And he has a bizarre conviction that the tax laws benefit the middle class more than the rich. But he also says enough that is fresh and provocative to make this short book worth reading. His case against the Fifth Amendment is surprisingly persuasive.

From Poor Law to Welfare State. Walter I. Trattner. Free Press, $9. More a catalog than a work of analysis, this history of American welfare law dares few interpretive insights and contains almost no new factual material. Still its summary of 300 years' experience is useful background reading for the next round of welfare reform, a task often approached as if none of the solutions had ever been tried before.

The Future of the Corporation. Herman Kahn, ed. Mason & Lipscomb, $8.95. Feeling blue about protein, power, population, and other problems of a crowded world? These essays from a 1970 conference are just the thing to make the future look bright. But amid Kahn's predictions of a better tomorrow, the reader may wonder about the constraints to production we've encountered recently. Kahn raises the question—and ducks it. "It is important to decide which of these two views [limits-to-growth vs. happy days ahead] is correct before one can get any sense on how to judge the discussion in this volume. Unfortunately we will not have the space to do so."

Future *Without* Shock. Louis B. Lundborg. Norton, $6.95. The author was chairman of the Bank of America when its Santa Barbara branches were being bombed, and this book describes the "greening of a banker" which followed. There is something admirable about a man like Lundborg asking, "What does the bombing of Cambodia have to do with bulldozers pushing a freeway through a virgin stand of redwoods?. . . The common ingredient is the arrogance of power." But one wishes Lundborg could have found another way to document his pilgrimage, for the ideas he actually expresses in the book are the tritest form of platitude.

The Genteel Populists. Simon Lazarus. Holt, Rinehart, and Winston, $6.95. An excerpt appears in this issue of *The Washington Monthly*.

The Healing Journey: New Approaches to Consciousness. Claudio Naranjo. Pantheon, $6.95.

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His Picture in the Papers: A Speculation on Celebrity in America, Based on the Life of Douglas Fairbanks, Sr. Richard Schickel. Charterhouse, $6.95.

The Impact of School Desegregation on a Southern City. Robert R. Mayer, James McCullough, Charles E. King, Anne Borders-Patterson. Heath-Lexington, $12.50.

The Institute of Pacific Relations: Asian Scholars and American Politics. John N. Thomas. Univ. of Washington, $8.95.

Last Rights: A Case for the Good Death. Marya Mannes. Morrow, $5.95. This is a modest effort, but in the 100-plus pages of straightforward observations Mannes makes a sensible and moving argument for the right "to die with dignity at a moment when life is devoid of it." The jacket photo, which show a woman well into her own middle age, suggests why books like this don't have the impact they should. Most people are unwilling to consider the dilemmas of euthanasia, or even the more tractable problems of care for the aged, until these issues stare them in the face.

Let's Stop Destroying Our Children. Shirley Camper Soman. Hawthorn, $7.95.

The Library of Congress. Charles A. Goodrum. Praeger, $9.50.

Man and Water: The Social Sciences in Management of Water Resources. L. Douglas James, ed. Univ. Press of Kentucky, $10.50.

The Medical Runaround. Andrew Malleson, M. D. Hart, $7.95. Malleson fits the time-honored tradition of dotty British reformers, offering his share of bizarre proposals but also talking a lot of good sense about how the medical profession goes wrong.

Money Mania: The Eras of Great Speculation in America, 1770-1970. Robert Sobel. Weybright & Talley, $9.95.

Must We Educate? Carol Bereiter. Prentice-Hall, $6.45/$2.45.

The New Heavens and New Earth: Political Religion in America. Cushing Strout. Harper & Row, $12.50.

The Old Man and Lesser Mortals. Larry L. King. Viking, $8.95.

The Passing of the Night: My Seven Years as a Prisoner of the North Vietnamese. Robinson Risner. Random House, $6.95.

Persons and Persuasions. Oren Root. Norton, $7.95. The author—who was a leader in one of the more fascinating happenings in modern American politics, Wendell Wilkie's dramatic victory at the 1940 Republican Convention—writes a bland book that contains little that is new in the way of fact or insight.

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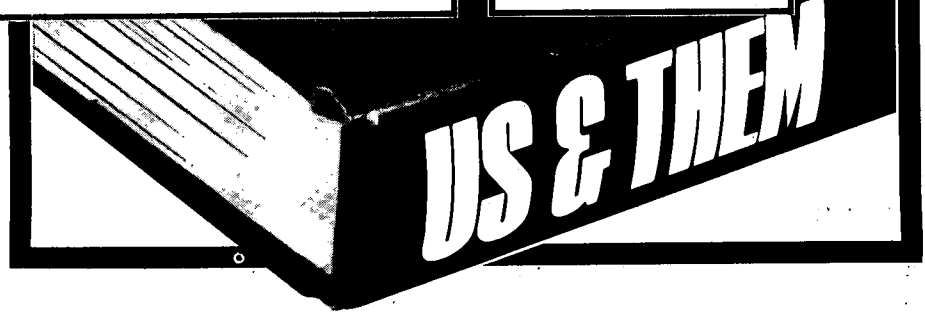

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Quester. Johns Hopkins, $11.50. Quester begins by proposing a country-by-country look at plans for nuclear weaponry. By the time he has touched base in New Delhi, Tokyo, Jerusalem, and a dozen other capitals and foreseen a nuclear future, the cumulative effect is overwhelming. An invaluable resource book.

Prophet without Honor: Glen Taylor and the Fight for American Liberalism. F. Ross Peterson. Univ. Press of Kentucky, $12.75.

Public Schools of Choice Mario D. Fantini. Simon & Schuster, $8.95.

Readings on La Raza: The Twentieth Century. Matt S. Meier, Feliciano Rivera, eds. Farrar, Straus & Giroux, $8.95/$3.50.

Remaking Asia: Essays in the American Uses of Power. Mark Selden, ed. Pantheon, $12.95/$3.45.

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Strategy and Values: Selected Writings of Robert Strausz-Hupe. William R. Kintner, Robert L. Pflatzgraff, Jr., eds. Heath-Lexington, $13.

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Tiger in the Court. Paul Hoffman. Playboy, $7.95. A rather routine biography of Herbert Stern, the 37-year-old U. S. Attorney whose anti-corruption crusade has bagged such New Jersey luminaries as former Rep. Cornelius Gallagher and former Newark Mayor Hugh Addonizio. In this tedious reconstruction of Stern's major cases, Hoffman fails to provide other than surface explanations of why the Garden State has nurtured so much corruption or what makes Herbert run.

Twenty Years in the Secret Service. Rufus W. Youngblood. Simon & Schuster, $7.95. Remember Rufus Youngblood, the Secret Serviceman who used his body to shield Vice President Johnson when the shots rang out in Dallas 10 years ago? The tone of this memoir is suggested by the vivid way Youngblood recounts the incident that made his career: "The Vice President reacted immediately. Still not seeing the source of the explosion, I swung across the seat back and sat on top of him." Youngblood also tells us something about government service when he explains why he left the Secret Service in 1971: "I had rounded out 20 years. . . and was now eligible for retirement. If I tried for 21, I would only be overstaying my welcome."

Victimology. Israel Drapkin, ed. Heath-Lexington, $16.

The Way to Go. Thomas C. Southerland, Jr., William McCleery. Simon & Schuster, $8.95. The authors make a convincing case for the revival of the passenger train.

Where Has Last July Gone? Drew Middleton. Quadrangle/New York Times, $7.95.

Who Shakes the Money Tree? George Thayer. Simon & Schuster, $8.95. The late George Thayer has produced a comprehensive, perceptive, and often delightful look at our current methods of political finance. Although some of the book is understandably familiar in light of the Watergate scandal, Thayer has produced an impressive amount of fresh material. Take the glimpse he provides of industrialist J. Irwin Miller, who has hired a six-man staff to rationalize the 75-100 contributions he regularly makes to promising candidates around the country. Thayer acknowledges that Miller "actually wants good men in office," but adds that "his contributions also enhance his business and social image." Thayer also displays an impressive grasp of the way state and local governments really operate. He quotes one local politico on what contracts are really important: "Jesus, you know, if you can get 25 miles of guardrails, *you're all set*! You gotta plow snow for *10 years* before you can do as well as you can with guardrails."

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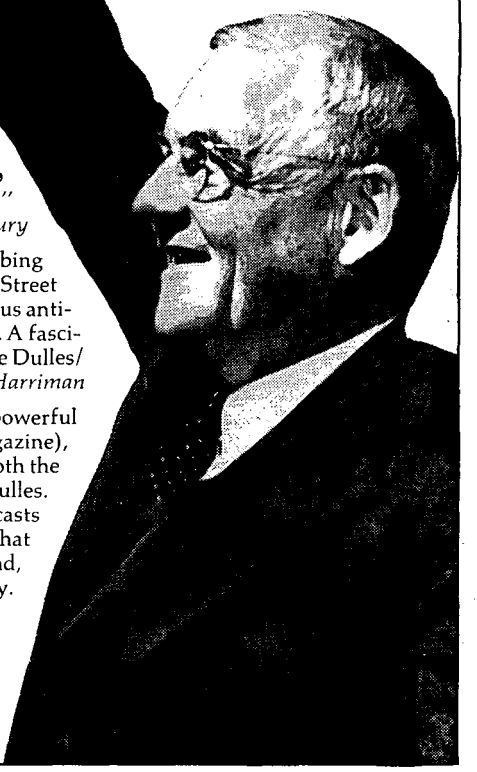

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